Assembly
California Legislature

ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
BILL QUIRK, CHAIR
ASSEMBLYMEMBER, TWENTIETH DISTRICT

AGENDA

9:00 a.m. – June 30, 2015
State Capitol, Room 126

PART II

SB 382 (Lara) – SB 716 (Lara)

Date of Hearing: June 30, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 382 (Lara) – As Amended June 15, 2015
As Proposed to be Amended in Committee

SUMMARY: Adds guidance to the existing criteria used by judges in determining the fitness of a minor to have his or her case adjudicated in juvenile court. Specifically, **this bill**:

1) Adds the following discretionary factors within each of the existing five criteria used to determine whether a minor is a fit and proper subject to be dealt with in the juvenile court system:

   a) The degree of criminal sophistication exhibited by the minor. Specifies that the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication;

   b) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. Provides that the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature;

   c) The minor's previous delinquent history. Provides the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior;

   d) Success of previous attempts by the juvenile court to rehabilitate the minor. Specifies that the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs; and,

   e) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. Specifies that the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

2) Revises the five criteria that a juvenile must demonstrate to the court when requesting a juvenile court disposition in his or her case, which was initiated in adult criminal court without a prior finding that the person was not fit for juvenile court, to add the same

discretionary factors above.

EXISTING LAW:

1) States, except as provided, any person who is under the age of 18 when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court. (Welf. & Inst. Code, § 602, subd. (a).)

2) Provides in any case where the juvenile court determines fitness of the minor, the court must examine whether the minor would or would not be amenable to the care, treatment, and training program available through the juvenile court, based upon an evaluation of the following criteria:

   a) The degree of criminal sophistication exhibited by the minor;

   b) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;

   c) The minor's previous delinquent history;

   d) Success of previous attempts by the juvenile court to rehabilitate the minor; and,

   e) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code, § 707, subds. (a) and (c).)

3) Authorizes a minor who has had his case prosecuted in adult criminal court, without a prior fitness hearing, to make a motion to receive a disposition under the juvenile court law, based upon each of the following five criteria:

   a) The degree of criminal sophistication exhibited by the person;

   b) Whether the person can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;

   c) The person's previous delinquent history;

   d) Success of previous attempts by the juvenile court to rehabilitate the person; and,

   e) The circumstances and gravity of the offense for which the person has been convicted. (Pen. Code, § 1170.17.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 382 would update the existing 5 criteria used by judges when determining the fitness of an individual to enter the adult criminal justice system to ensure judges consider, such as the actual behavior of the individual and

their ability to grow, mature, and be rehabilitated. It is critical that judges have the most relevant information and full picture of an individual, before they make the critical decision of which jurisdiction a juvenile offender should be charged in."

2) **Background**: According to background materials provided by the author's office, "Traditionally, juveniles in California could only be transferred to the adult criminal courts after a judicial 'fitness' hearing. At the hearing, the juvenile court judge would receive a comprehensive social study report, and evaluate the young person's 'fitness' to remain in juvenile court in light of five criteria relating to criminal history, past attempts at rehabilitation, capacity to be rehabilitated, criminal sophistication, and characteristics of the alleged offense. Since the enactment of Proposition 21 in 2000, juveniles as young as 14 years of age may also be handled in the adult courts by prosecutorial 'direct file,' which bypasses the traditional judicial hearing."

3) **Jurisdiction Over Juvenile Offenders**: California law generally provides that persons under the age of 18 who are alleged to have committed a crime are within the jurisdiction of the juvenile court. However, there are three discrete mechanisms for remanding minors to adult criminal court:

   By statutory waiver, meaning that a statute mandates that juveniles who fall into certain categories automatically will be transferred to adult court. Current statutes provide that juvenile court has no jurisdiction over minors 14 years of age and older who are alleged to have committed first degree murder where the minor personally murdered the victim, or who are alleged to have committed specified "1-strike" forcible sex crime offenses under certain circumstances; these offenses are required to be prosecuted in adult court. (Welf. & Inst. Code, § 602, subd. (b).)

   By prosecutorial waiver, meaning for certain cases prosecutors have the discretion to file charges against certain minors in juvenile or adult criminal court. For minors 14 years of age or older, a prosecutor may directly file the case in adult criminal court if the minor has previously committed an offense listed in Welfare and Institutions Code section 707(b) and the current offense is also one of those listed offenses, as well as in other enumerated circumstances such as when a minor is alleged to have committed an offense that if committed by an adult would be punishable by death or imprisonment in state prison for life. (Welf. & Inst. Code, § 707, subd.(d)(2).) For minors 16 years of age or older, a prosecutor may directly file the case in adult criminal court if the minor's current offense is one of the offenses listed in Welfare and Institutions Code section 707(b). (Welf. & Inst. Code, § 707, subd. (d)(1).)

   By judicial waiver, meaning that juvenile court judges use their discretion to determine whether to waive jurisdiction over a case. In these instances, the court must make a determination as to whether the minor is fit for juvenile court. The juvenile court determines the fitness of a minor for juvenile court by weighing whether the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

   a) The degree of criminal sophistication exhibited by the minor;
   b) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;

c) The minor's previous delinquent history;
d) Success of previous attempts by the juvenile court to rehabilitate the minor; and,
e) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code, § 707, subds. (a) and (c).)

This bill deals with judicial waivers, where a court considers the five enumerated factors to determine the fitness of a minor for juvenile court. This bill merely provides additional guidance to the courts on how to evaluate the criteria, and replaces the term "consider" with "give weight to."

4) **Proposed Amendments to be Adopted in Committee**: This bill will be heard as proposed to be amended. The amendments are non-substantive in nature. The amendments conform the language provided in Penal Code section 1170.17 to the language in Welfare and Institutions Code section 707 in order to make the discretionary factors uniform in both sections.

5) **Arguments in Support**:

a) According to the *Ella Baker Center for Human Rights*, "Current law allows youth as young as 14 to be charged as adults. Some youth may be direct filed by prosecutors, bypassing the courts, while other youth must go through a fitness hearing where a judge makes the determination to remove the youth from juvenile proceedings into adult court, or keep the youth in juvenile court. Current law requires judges to apply 5 criteria to make this determination. In light of significant changes in the law and findings on adolescent brain development, this bill would codify additional factors that judges should take into consideration, including maturity, intellectual capacity, childhood trauma, and the level of harm directly caused by the youth."

b) The *Judicial Council* writes, "The Judicial Council supports SB 382 because it enhances judicial discretion, increases uniformity in courts when considering the fitness of a juvenile to enter either the juvenile court system or the adult criminal justice system, and is consistent with existing practices. SB 382 enhances judicial discretion by providing further illustration of the five existing criteria judges must consider when determining whether an individual should be tried as a juvenile or as an adult for certain serious crimes. Judges are free to use their discretion to determine which factors are relevant to each of the five listed criteria and to consider additional factors similar to those listed by SB 382.

"Further, the council believes that by giving courts additional guidance on the Legislature's intent behind each of the five criteria listed in existing law, SB 382 will result in greater consistency in the application of those factors by courts. Finally, many criminal justice partners already consider those factors when determining whether an individual is fit for either the juvenile court system or the adult court system."

6) **Prior Legislation**: SB 1151 (Kuehl), of the 2003-2004 Legislative Session, would have clarified the definition of the "circumstances and gravity of the offense" for purposes of evaluating the fitness of a minor for juvenile court jurisdiction. SB 1151 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-Recidivism Coalition (Sponsor)
Human Rights Watch (Sponsor)
Alliance for Boys and Men of Color
American Civil Liberties Union of California
American Probation and Parole Association
Asian Americans Advancing Justice – Asian Law Caucus
Californians for Safety and Justice
Center on Juvenile and Criminal Justice
Children Now
Children's Defense Fund – California
East Bay Children's Law Office
Friends Committee on Legislation of California
Judicial Council
Legal Services for Prisoners with Children
Los Angeles Regional Reentry Partnership
National Employment Law Project
Office of Restorative Justice of the Archdiocese of Los Angeles
PolicyLink
Post-Conviction Justice Project, USC Gould School of Law
Root & Rebound
Violence Prevention Coalition of Greater Los Angeles
Youth Law Center

Opposition

None

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 SB-382 (Lara (S))

*********Amendments are in BOLD*********

Mock-up based on Version Number 96 - Amended Assembly 6/15/15
Submitted by: Stella Choe, Assembly Public Safety

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1170.17 of the Penal Code is amended to read:

1170.17. (a) When a person is prosecuted for a criminal offense committed while he or she was under 18 years of age and the prosecution was lawfully initiated in a court of criminal jurisdiction without a prior finding that the person is not a fit and proper subject to be dealt with under the juvenile court law, upon subsequent conviction for any criminal offense, the person shall be subject to the same sentence as an adult convicted of the identical offense, in accordance with subdivision (a) of Section 1170.19, except under the circumstances described in subdivision (b), (c), or (d).

(b) Where the conviction is for the type of offense which, in combination with the person's age at the time the offense was committed, makes the person eligible for transfer to a court of criminal jurisdiction, pursuant to a rebuttable presumption that the person is not a fit and proper subject to be dealt with under the juvenile court law, and the prosecution for the offense could not lawfully be initiated in a court of criminal jurisdiction, then either of the following shall apply:

(1) The person shall be subject to the same sentence as an adult convicted of the identical offense in accordance with the provisions set forth in subdivision (a) of Section 1170.19, unless the person prevails upon a motion brought pursuant to paragraph (2).

(2) Upon a motion brought by the person, the court shall order the probation department to prepare a written social study and recommendation concerning the person's fitness to be dealt with under the juvenile court law and the court shall either conduct a fitness hearing or suspend proceedings and remand the matter to the juvenile court to prepare a social study and make a determination of fitness. The person shall receive a disposition under the juvenile court law only if the person demonstrates, by a preponderance of the evidence, that he or she is a fit and proper subject to be dealt with under the juvenile court law, based upon each of the following five criteria:

(A) The degree of criminal sophistication exhibited by the person. This may include, but is not limited to, consideration of *giving weight to* the person's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the offense, the person's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the person's actions, and the effect of the person's family and community environment and childhood trauma on the person's criminal sophistication.

(B) Whether the person can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. This may include, but is not limited to, ~~consideration of *giving weight to* the person's potential to grow and mature, and the person's growth and maturation since the time that he or she committed the criminal offense.~~ ***giving weight to the minor's potential to grow and mature.***

(C) The person's previous delinquent history. This may include, but is not limited to, ~~consideration of~~ *giving weight to* the seriousness of the person's previous delinquent history and the effect of the person's family and community environment and childhood trauma on the person's previous delinquent behavior.

(D) Success of previous attempts by the juvenile court to rehabilitate the person. This may include, but is not limited to, *giving weight to* an analysis of the adequacy of the services previously provided to address the person's needs.

(E) The circumstances and gravity of the offense for which the person has been convicted. This may include, but is not limited to, ~~consideration of~~ *giving weight to* the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

If the court conducting the fitness hearing finds that the person is not a fit and proper subject for juvenile court jurisdiction, then the person shall be sentenced by the court where he or she was convicted, in accordance with paragraph (1). If the court conducting the hearing on fitness finds that the person is a fit and proper subject for juvenile court jurisdiction, then the person shall be subject to a disposition in accordance with subdivision (b) of Section 1170.19.

(c) Where the conviction is for the type of offense which, in combination with the person's age at the time the offense was committed, makes the person eligible for transfer to a court of criminal jurisdiction, pursuant to a rebuttable presumption that the person is a fit and proper subject to be dealt with under the juvenile court law, then the person shall be sentenced as follows:

(1) The person shall be subject to a disposition under the juvenile court law, in accordance with the provisions of subdivision (b) of Section 1170.19, unless the district attorney prevails upon a motion, as described in paragraph (2).

(2) Upon a motion brought by the district attorney, the court shall order the probation department to prepare a written social study and recommendation concerning whether the person is a fit and proper subject to be dealt with under the juvenile court law. The court shall either conduct a

fitness hearing or suspend proceedings and remand the matter to the juvenile court for a determination of fitness. The person shall be subject to a juvenile disposition under the juvenile court law unless the district attorney demonstrates, by a preponderance of the evidence, that the person is not a fit and proper subject to be dealt with under the juvenile court law, based upon the five criteria set forth in paragraph (2) of subdivision (b). If the person is found to be not a fit and proper subject to be dealt with under the juvenile court law, then the person shall be sentenced in the court where he or she was convicted, in accordance with the provisions set forth in subdivision (a) of Section 1170.19. If the person is found to be a fit and proper subject to be dealt with under the juvenile court law, the person shall be subject to a disposition, in accordance with the provisions of subdivision (b) of Section 1170.19.

(d) Where the conviction is for the type of offense which, in combination with the person's age, does not make the person eligible for transfer to a court of criminal jurisdiction, the person shall be subject to a disposition in accordance with the provisions of subdivision (b) of Section 1170.19.

SEC. 2. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which a minor is alleged to be a person described in subdivision (a) of Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the criteria specified in clause (i) of subparagraphs (A) to (E), inclusive:

(A) (i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(B) (i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(C) (i) The minor's previous delinquent history.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(D) (i) Success of previous attempts by the juvenile court to rehabilitate the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(E) (i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, ~~the level of harm actually caused by the minor, and the minor's mental and emotional development.~~ ***the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.***

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.

(2) (A) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained 16 years of age, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:

(i) The minor has previously been found to have committed two or more felony offenses.

(ii) The offenses upon which the prior petition or petitions were based were committed when the minor had attained 14 years of age.

(B) Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the criteria specified in subclause (I) of clauses (i) to (v), inclusive:

(i) (I) The degree of criminal sophistication exhibited by the minor.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(ii) (I) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(iii) (I) The minor's previous delinquent history.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(iv) (I) Success of previous attempts by the juvenile court to rehabilitate the minor.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(v) (I) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, ~~the level of harm actually caused by the minor, and the minor's mental and emotional development.~~ ***the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.***

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subclause (I) of clauses (i) to (v), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of those criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea that may have been entered already shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force, violence, or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) An offense described in Section 1203.09 of the Penal Code.

(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(19) A felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.

(27) Kidnapping as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 26100 of the Penal Code.

(29) The offense described in Section 18745 of the Penal Code.

(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the criteria specified in subparagraph (A) of paragraphs (1) to (5), inclusive:

(1) (A) The degree of criminal sophistication exhibited by the minor.

(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(2) (A) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(3) (A) The minor's previous delinquent history.

(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(4) (A) Success of previous attempts by the juvenile court to rehabilitate the minor.

(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(5) (A) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may ~~consider~~ *give weight to* any relevant factor, including, but not limited to, ~~the level of harm actually caused by the minor, and the minor's mental and emotional development.~~ ***the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.***

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subparagraph (A) of paragraphs (1) to (5), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of those criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may have been entered already shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).

(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:

(A) The minor is alleged to have committed an offense that if committed by an adult would be punishable by death or imprisonment in the state prison for life.

(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 or 12022.53 of the Penal Code.

(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:

(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).

(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in criminal conduct by gang members.

(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.

(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.

(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one or more of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of a felony offense, when he or she was 14 years of age or older:

(A) A felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.

(B) A felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.

(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.

(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In

conjunction with the preliminary hearing as provided in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.

(5) For an offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(e) A report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.

Date of Hearing: June 30, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 405 (Hertzberg) – As Amended June 24, 2015

SUMMARY: Requires courts to allow individuals to schedule court proceedings, even if bail or civil assessment has been imposed. Specifically, **this bill**:

1) Provides that the ability to post bail or to pay the civil assessment is not a prerequisite to filing a request that the court vacate the assessment.

2) States that imposition or collection of a civil assessment or bail shall not prevent a defendant from scheduling a court hearing on the underlying charge.

EXISTING LAW:

1) Provides that in addition to any other penalty in an infraction, misdemeanor, or felony the court may impose a civil penalty up to $300 against any defendant who fails to appear in court for any proceeding or fails to pay any portion of the fine ordered by the court. (Pen. Code, § 1214.1, subd. (a).)

2) Provides that the assessment shall not become effective until at least 10 calendar days after the court mails a warning to the defendant, and the court shall vacate the order for the assessment if the person appears in time and shows good failure to appear or failure to pay the fine. (Pen. Code, § 1214.1, subd. (b).)

3) Specifies that if a civil assessment is imposed under this section, no bench warrant or warrant of arrest shall be issued with respect to the failure to appear at the proceeding for which the assessment is imposed or the failure to pay the fine or installment of bail. (Pen. Code, § 1214.1, subd. (c).)

4) States that an outstanding, unserved bench warrant or warrant of arrest for a failure to appear or for a failure to pay a fine or installment of bail shall be recalled prior to the subsequent imposition of a civil assessment. (Pen. Code, § 1214.1, subd. (c).)

5) Provides that the civil assessment imposed shall be subject to the due process requirements governing defense and collection of civil money judgments generally. (Pen. Code, § 1214.1, subd. (d).)

6) Allows the clerk of the court to accept a payment and forfeiture of at least 10 percent of the total bail amount for each infraction violation of the Vehicle Co code prior to the date on which the defendant promised to appear, or prior to the expiration of any lawful continuance of that date, or upon receipt of information that an action has been filed, and prior to the

scheduled court date, if all of the following circumstances exist:

a) The defendant is charged with an infraction violation of this code or an infraction violation of an ordinance adopted pursuant to the Vehicle Code. (Veh. Code, § 40510.5, subd. (a)(1).)

b) The defendant submits proof of correction, when proof of correction is mandatory for a correctable offense. (Veh. Code, § 40510.5, subd. (a)(2).)

c) The offense does not require an appearance in court. (Veh. Code, § 40510.5, subd. (a)(3).)

d) The defendant signs a written agreement to pay and forfeit the remainder of the required bail according to an installment schedule as agreed upon with the court. The Judicial Council shall prescribe the form of the agreement for payment and forfeiture of bail in installments for infraction violations. (Veh. Code, § 40510.5, subd. (a)(4).)

7) Specifies that when a clerk accepts an agreement for payment and forfeiture of bail in installments, the clerk shall continue the appearance date of the defendant to the date to complete payment and forfeiture of bail in the agreement. (Veh. Code, § 40510.5, subd. (b).)

8) Provides that for the purposes of reporting violations of the Vehicle Code to the Department of Motor Vehicles under Section 1803, the date that the defendant signs an agreement to pay and forfeit bail in installments shall be reported as the date of conviction. (Veh. Code, § 40510.5, subd. (d).)

9) States that when the defendant fails to make an installment payment, the court may charge a failure to appear or pay and impose a civil assessment as specified, or issue an arrest warrant for a failure to appear. (Veh. Code, § 40510.5, subd. (e).)

10) States that payment of a bail amount under this section is forfeited when collected and shall be distributed by the court in the same manner as other fines, penalties, and forfeitures collected for infractions. (Veh. Code, § 40510.5, subd. (f).)

11) Specifies that the defendant shall pay to the clerk of the court or the collecting agency a fee for the processing of installment accounts. This fee shall equal the administrative and clerical costs, as determined by the board of supervisors or by the court, except that the fee shall not exceed $35. (Veh. Code, § 40510.5, subd. (g).)

12) Requires courts to allow a defendant to appear for arraignment and trial without deposit of bail on traffic infraction violations of the Vehicle Code. (Rule of Court 4.105, subd. (b).) except:

a) Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail (Rule of Court 4.105, subd. (c)(1).) ;

b) Courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court (Rule of Court 4.105, subd. (c)(2).); and

c) Courts may require a deposit of bail before trial if the court finds, based on the circumstances of a particular case, that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding. (Rule of Court 4.105, subd. (c)(3).)

13) States that courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for traffic infractions, including any website information, written instructions, courtesy notices, and forms. Courts must implement this subdivision as soon as reasonably possible but no later than September 15, 2015. (Rule of Court 4.105, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Due to increases in fines and fees, a staggering number of Californians have no access to courts when they are cited for traffic citations. Exorbitant fees can make it challenging for low-income people to resolve minor traffic infractions since many counties require fines to be paid prior to a hearing on the infraction. As a result of unclear policy and high fees, drivers often do not have the opportunity to see a judge and essentially lose the right to due process.

   "The proposed solution is to reverse that general practice. It will have an effect on the 4.2 million California drivers who have had their licenses suspended in the last eight years for not paying what started out as minor traffic violations or for missing a deadline to appear in court."

2) **Budget Cuts Since the Great Recession Have Reduced the Public's Access to Courts:** Since the Great Recession in 2008, the California court system in particular has faced unprecedented budget cuts. The result has been years of courthouse closures and layoffs, with over $1 billion in budget reductions and closures of over 200 courtrooms. Members of the public seeking to use court services have found fewer courthouses open for fewer days for shorter hours and with longer lines, among many other barriers to access." (*Not Just a Ferguson Problem, How Traffic Courts Drive Inequality in California*, p. 12.) (http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf.)

   "These court cuts have directly impacted people facing citations in traffic court. In addition to the general lack of court access, people with tickets have found themselves increasingly shut out of the traffic court system as a result of courts' growing use of "bail" requirements. In essence, courts have begun to require payment of "total bail," or the full amount owed on a citation, as a precondition to accessing court resources." (*Ibid.*)

   "A person cannot have an initial hearing on their ticket at all without paying the fine up front. If that person ultimately prevails in fighting the ticket, they would in effect be seeking reimbursement from the court." (*Ibid.*)

3) **Recently Adopted Rule of Court Does Not Address Denials of Court Access Based on Civil Assessments for Failures to Appear or Pay Fine:** California courts recently adopted

Rule of Court 4.105. That rule was adopted on an expedited basis. It requires courts to allow a defendant to appear for arraignment and trial without a deposit of bail on traffic infraction violations of the Vehicle Code. (Rule of Court 4.105, subd. (b).) This rule states that courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for traffic infractions, including any Web site information, written instructions, courtesy notices, and forms. (Rule of Court 4.105, subd. (d).) Courts are to implement this rule as soon as reasonably possible, but no later than September 15, 2015. Rule of Court 4.105 does not address access to courts in those situations where an individual missed the appearance on their traffic ticket, or failed to pay the traffic fine by the required court date, but is prevented from scheduling a court appearance because the bail or civil assessment has not been paid. SB 405 addresses those situations not covered by Rule of Court 4.105.

4) **Imposition of Civil Assessment When Individual Misses a Court Date or Fails to Pay Fine:** When a person misses a court date or a deadline to pay a traffic ticket, the court can add up to $300 to the original fine. (Pen. Code, § 1214.1.) This amount is referred to as a "civil assessment" and may only be imposed if the person gets notice and still does not pay or appear within a specified time.

   If a civil assessment has been imposed, a person should be able to demonstrate that they had good cause for the failure to appear in court or failure to pay the fine. In order to do that, the person needs to get a court appearance in front of a judge. SB 405 would mandate that where a civil assessment has been imposed, a person can schedule a court appearance without having to pay the civil assessment, or fine amount of the ticket, before going to court. SB 405 would also ensures that a person can schedule a court date on the on the underlying traffic ticket without paying the civil assessment or fine.

5) **Argument in Support**: According to *Western Center on Law & Poverty (WCLP)*, "Under current law, if people have failed to appear at a court date (FTA), their driver's license will be suspended and they will be required to pay full bail (all the fines, fees and assessments) before they can even appear in front of a judge. They are convicted of the FTA and receive an extra $300 civil assessment without ever having been in court, even though such a conviction requires a finding of willfulness. Low income people, who cannot afford to pay full bail, are effectively locked out of court. So, they cannot show good cause for their non-appearance, which means they cannot avail themselves of the benefits of the judge's other discretionary powers. Ultimately, this method of requiring full bail before a person is allowed to see a judge creates a two-tiered system of justice where people's access to justice depends on whether they can pay. This results in poor people missing out on due process.

   "WCLP and other legal aid organizations compiled a report highlighting this due process problem: 'Not just a Ferguson Problem – How Traffic Courts Drive Inequality in California.' California's Judicial Council (JC) responded by issuing an expedited rule, Rule 4.105. While we approve of the Judicial Council's first step in correcting this problem, we recognize that the rule leaves out a large group of people who cannot access the court because of the bail requirement. The JC rule states that courts shall not require bail before a hearing, but only for those people who already 'appeared by the appearance date or an approved extension of that date.' Cal Rules of Court, Rule 4.105. This requirement unfortunately excludes people who missed their original court date, and only benefits those who attended their first court date and thereafter failed to appear. As advocates of low-

income clients who experience the current system, we see that the principal problem is with exactly that group of people who missed their original court date and cannot get in front of a judge because they cannot afford the payments.

"SB 405 will amend Section 1214.1 of the Penal Code to prohibit courts from requiring people with FTAs to pay full bail before seeing a judge. This will cover the people that are left out from the JC's rule and ensure that anyone who has an FTA will have constitutional due process and be able to see a judge to either establish a payment plan, ask for a fee waiver or community service, or show good cause on the FTA."

6) **Related Legislation**: SB 85, enrolled June 22, 2015, effective immediately, allows counties to set up amnesty programs for fines incurred prior to January 1, 2013. Programs will expire January 1, 2018.

7) **Prior Legislation**:

   a) SB 366 (Wright), of the Legislative Session of 2013-2014, held in Senate Appropriations, would have given courts more discretion to consider defendants ability to pay in setting fines and fees.

   b) AB 2724 (Bradford), of the Legislative Session of 2013-2014, held in Assembly Appropriations, would have allowed defendants to get their driving privileges back when the driver's license had been suspended for failing to pay a fine, if they agree to pay in installments.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU
American Friends Service Committee
California Association of Highway Patrolmen
California Association of Local Conservation Corps
California Attorneys for Criminal Justice
California Catholic Conference, Inc.
California Department of Insurance
California Immigrant Policy Center
California Partnership
California Public Defenders Association
Consumer Attorneys of California
Courage Campaign
East Bay Community Law Center
Legal Services for Prisoners with Children
Personal Insurance Federation of California
National Association of Social Workers
New Way of Life
PICO California
Rubicon Programs

Western Center on Law & Poverty

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: June 30, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 405 (Hertzberg) – As Amended June 24, 2015

SUMMARY: Requires courts to allow individuals to schedule court proceedings, even if bail or civil assessment has been imposed. Specifically, **this bill**:

1) Provides that the ability to post bail or to pay the civil assessment is not a prerequisite to filing a request that the court vacate the assessment.

2) States that imposition or collection of a civil assessment or bail shall not prevent a defendant from scheduling a court hearing on the underlying charge.

EXISTING LAW:

1) Provides that in addition to any other penalty in an infraction, misdemeanor, or felony the court may impose a civil penalty up to $300 against any defendant who fails to appear in court for any proceeding or fails to pay any portion of the fine ordered by the court. (Pen. Code, § 1214.1, subd. (a).)

2) Provides that the assessment shall not become effective until at least 10 calendar days after the court mails a warning to the defendant, and the court shall vacate the order for the assessment if the person appears in time and shows good failure to appear or failure to pay the fine. (Pen. Code, § 1214.1, subd. (b).)

3) Specifies that if a civil assessment is imposed under this section, no bench warrant or warrant of arrest shall be issued with respect to the failure to appear at the proceeding for which the assessment is imposed or the failure to pay the fine or installment of bail. (Pen. Code, § 1214.1, subd. (c).)

4) States that an outstanding, unserved bench warrant or warrant of arrest for a failure to appear or for a failure to pay a fine or installment of bail shall be recalled prior to the subsequent imposition of a civil assessment. (Pen. Code, § 1214.1, subd. (c).)

5) Provides that the civil assessment imposed shall be subject to the due process requirements governing defense and collection of civil money judgments generally. (Pen. Code, § 1214.1, subd. (d).)

6) Allows the clerk of the court to accept a payment and forfeiture of at least 10 percent of the total bail amount for each infraction violation of the Vehicle Co code prior to the date on which the defendant promised to appear, or prior to the expiration of any lawful continuance of that date, or upon receipt of information that an action has been filed, and prior to the

scheduled court date, if all of the following circumstances exist:

a) The defendant is charged with an infraction violation of this code or an infraction violation of an ordinance adopted pursuant to the Vehicle Code. (Veh. Code, § 40510.5, subd. (a)(1).)

b) The defendant submits proof of correction, when proof of correction is mandatory for a correctable offense. (Veh. Code, § 40510.5, subd. (a)(2).)

c) The offense does not require an appearance in court. (Veh. Code, § 40510.5, subd. (a)(3).)

d) The defendant signs a written agreement to pay and forfeit the remainder of the required bail according to an installment schedule as agreed upon with the court. The Judicial Council shall prescribe the form of the agreement for payment and forfeiture of bail in installments for infraction violations. (Veh. Code, § 40510.5, subd. (a)(4).)

7) Specifies that when a clerk accepts an agreement for payment and forfeiture of bail in installments, the clerk shall continue the appearance date of the defendant to the date to complete payment and forfeiture of bail in the agreement. (Veh. Code, § 40510.5, subd. (b).)

8) Provides that for the purposes of reporting violations of the Vehicle Code to the Department of Motor Vehicles under Section 1803, the date that the defendant signs an agreement to pay and forfeit bail in installments shall be reported as the date of conviction. (Veh. Code, § 40510.5, subd. (d).)

9) States that when the defendant fails to make an installment payment, the court may charge a failure to appear or pay and impose a civil assessment as specified, or issue an arrest warrant for a failure to appear. (Veh. Code, § 40510.5, subd. (e).)

10) States that payment of a bail amount under this section is forfeited when collected and shall be distributed by the court in the same manner as other fines, penalties, and forfeitures collected for infractions. (Veh. Code, § 40510.5, subd. (f).)

11) Specifies that the defendant shall pay to the clerk of the court or the collecting agency a fee for the processing of installment accounts. This fee shall equal the administrative and clerical costs, as determined by the board of supervisors or by the court, except that the fee shall not exceed $35. (Veh. Code, § 40510.5, subd. (g).)

12) Requires courts to allow a defendant to appear for arraignment and trial without deposit of bail on traffic infraction violations of the Vehicle Code. (Rule of Court 4.105, subd. (b).) except:

a) Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail (Rule of Court 4.105, subd. (c)(1).) ;

b) Courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court (Rule of Court 4.105, subd. (c)(2).); and

c) Courts may require a deposit of bail before trial if the court finds, based on the circumstances of a particular case, that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding. (Rule of Court 4.105, subd. (c)(3).)

13) States that courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for traffic infractions, including any website information, written instructions, courtesy notices, and forms. Courts must implement this subdivision as soon as reasonably possible but no later than September 15, 2015. (Rule of Court 4.105, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Due to increases in fines and fees, a staggering number of Californians have no access to courts when they are cited for traffic citations. Exorbitant fees can make it challenging for low-income people to resolve minor traffic infractions since many counties require fines to be paid prior to a hearing on the infraction. As a result of unclear policy and high fees, drivers often do not have the opportunity to see a judge and essentially lose the right to due process.

"The proposed solution is to reverse that general practice. It will have an effect on the 4.2 million California drivers who have had their licenses suspended in the last eight years for not paying what started out as minor traffic violations or for missing a deadline to appear in court."

2) **Budget Cuts Since the Great Recession Have Reduced the Public's Access to Courts:** Since the Great Recession in 2008, the California court system in particular has faced unprecedented budget cuts. The result has been years of courthouse closures and layoffs, with over $1 billion in budget reductions and closures of over 200 courtrooms. Members of the public seeking to use court services have found fewer courthouses open for fewer days for shorter hours and with longer lines, among many other barriers to access." (*Not Just a Ferguson Problem, How Traffic Courts Drive Inequality in California*, p. 12.) (http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf.)

"These court cuts have directly impacted people facing citations in traffic court. In addition to the general lack of court access, people with tickets have found themselves increasingly shut out of the traffic court system as a result of courts' growing use of "bail" requirements. In essence, courts have begun to require payment of "total bail," or the full amount owed on a citation, as a precondition to accessing court resources." (*Ibid.)*

"A person cannot have an initial hearing on their ticket at all without paying the fine up front. If that person ultimately prevails in fighting the ticket, they would in effect be seeking reimbursement from the court." (*Ibid.)*

3) **Recently Adopted Rule of Court Does Not Address Denials of Court Access Based on Civil Assessments for Failures to Appear or Pay Fine:** California courts recently adopted

Rule of Court 4.105. That rule was adopted on an expedited basis. It requires courts to allow a defendant to appear for arraignment and trial without a deposit of bail on traffic infraction violations of the Vehicle Code. (Rule of Court 4.105, subd. (b).) This rule states that courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for traffic infractions, including any Web site information, written instructions, courtesy notices, and forms. (Rule of Court 4.105, subd. (d).) Courts are to implement this rule as soon as reasonably possible, but no later than September 15, 2015. Rule of Court 4.105 does not address access to courts in those situations where an individual missed the appearance on their traffic ticket, or failed to pay the traffic fine by the required court date, but is prevented from scheduling a court appearance because the bail or civil assessment has not been paid. SB 405 addresses those situations not covered by Rule of Court 4.105.

4) **Imposition of Civil Assessment When Individual Misses a Court Date or Fails to Pay Fine:** When a person misses a court date or a deadline to pay a traffic ticket, the court can add up to $300 to the original fine. (Pen. Code, § 1214.1.) This amount is referred to as a "civil assessment" and may only be imposed if the person gets notice and still does not pay or appear within a specified time.

   If a civil assessment has been imposed, a person should be able to demonstrate that they had good cause for the failure to appear in court or failure to pay the fine. In order to do that, the person needs to get a court appearance in front of a judge. SB 405 would mandate that where a civil assessment has been imposed, a person can schedule a court appearance without having to pay the civil assessment, or fine amount of the ticket, before going to court. SB 405 would also ensures that a person can schedule a court date on the on the underlying traffic ticket without paying the civil assessment or fine.

5) **Argument in Support**: According to *Western Center on Law & Poverty (WCLP)*, "Under current law, if people have failed to appear at a court date (FTA), their driver's license will be suspended and they will be required to pay full bail (all the fines, fees and assessments) before they can even appear in front of a judge. They are convicted of the FTA and receive an extra $300 civil assessment without ever having been in court, even though such a conviction requires a finding of willfulness. Low income people, who cannot afford to pay full bail, are effectively locked out of court. So, they cannot show good cause for their non-appearance, which means they cannot avail themselves of the benefits of the judge's other discretionary powers. Ultimately, this method of requiring full bail before a person is allowed to see a judge creates a two-tiered system of justice where people's access to justice depends on whether they can pay. This results in poor people missing out on due process.

   "WCLP and other legal aid organizations compiled a report highlighting this due process problem: 'Not just a Ferguson Problem – How Traffic Courts Drive Inequality in California.' California's Judicial Council (JC) responded by issuing an expedited rule, Rule 4.105. While we approve of the Judicial Council's first step in correcting this problem, we recognize that the rule leaves out a large group of people who cannot access the court because of the bail requirement. The JC rule states that courts shall not require bail before a hearing, but only for those people who already 'appeared by the appearance date or an approved extension of that date.' Cal Rules of Court, Rule 4.105. This requirement unfortunately excludes people who missed their original court date, and only benefits those who attended their first court date and thereafter failed to appear. As advocates of low-

income clients who experience the current system, we see that the principal problem is with exactly that group of people who missed their original court date and cannot get in front of a judge because they cannot afford the payments.

"SB 405 will amend Section 1214.1 of the Penal Code to prohibit courts from requiring people with FTAs to pay full bail before seeing a judge. This will cover the people that are left out from the JC's rule and ensure that anyone who has an FTA will have constitutional due process and be able to see a judge to either establish a payment plan, ask for a fee waiver or community service, or show good cause on the FTA."

6) **Related Legislation**: SB 85, enrolled June 22, 2015, effective immediately, allows counties to set up amnesty programs for fines incurred prior to January 1, 2013. Programs will expire January 1, 2018.

7) **Prior Legislation**:

   a) SB 366 (Wright), of the Legislative Session of 2013-2014, held in Senate Appropriations, would have given courts more discretion to consider defendants ability to pay in setting fines and fees.

   b) AB 2724 (Bradford), of the Legislative Session of 2013-2014, held in Assembly Appropriations, would have allowed defendants to get their driving privileges back when the driver's license had been suspended for failing to pay a fine, if they agree to pay in installments.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life (Co-Sponsor)
East Bay Community Law Center (Co-Sponsor)
Legal Services for Prisoners with Children (Co-Sponsor)
ACLU
American Friends Service Committee
California Association of Highway Patrolmen
California Association of Local Conservation Corps
California Attorneys for Criminal Justice
California Catholic Conference, Inc.
California Department of Insurance
California Immigrant Policy Center
California Partnership
California Public Defenders Association
Consumer Attorneys of California
Courage Campaign
Personal Insurance Federation of California
National Association of Social Workers
PICO California
Rubicon Programs

Western Center on Law & Poverty

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: June 16, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 411 (Lara) – As Introduced February 25, 2015

SUMMARY: Provides that the fact that a person takes a photograph or makes an audio or video recording of a public officer, peace officer, or executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of specified offenses for obstruction of an officer, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person. Specifically, **this bill**:

1) States that the fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of attempting by means of threats or violence, to deter or prevent an executive officer from performing their duty, or resisting by the use of force or violence the officer, in performance of his or her duty.

2) Provides that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of willfully resisting, delaying, or obstructing a public officer, or peace officer, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

3) States that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute reasonable suspicion to detain the person or probable cause to arrest the person.

EXISTING LAW:

1) States that every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed on the officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment. (Pen. Code, § 69.)

2) Provides that every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as specified, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is

prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

3) States that every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 148, subd. (a).)

4) Provides that any person who removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer, while willfully resisting, delaying obstructing the officer in the discharge or attempt to discharge any official duty, shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170. (Pen. Code, § 148, subd. (b).)

5) Provides that any person who removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer, while willfully resisting, delaying obstructing the officer in the discharge or attempt to discharge any official duty, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170. (Pen. Code, §148, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Our Constitution guarantees us all the fundamental right to freedom of speech. Recent events throughout the country and here in California have raised questions about when an individual can – and can't – record. SB 411 will help erase ambiguity, enhance transparency and ensure that freedom of speech is protected for both civilians and police officers."

2) **Need for Clarification to Ensure Consistency in Encounters Between Law Enforcement and Citizens:** With the prevalence of cell phones and other devices that can record video or take pictures, it is common practice for citizens to record interactions between law enforcement and the public. Cell phone video recordings have been used to expose misconduct on the part of police officers as well as exonerate police officers from wrongful accusations. However, the dynamic of cell phone use by citizens to record police conduct has led to situations in which law enforcement have stopped, sometimes forcefully, the use of a recording device by a citizen.

   In April 2015, a woman standing on the sidewalk used her cell phone to record video of two men standing a short distance away, wearing black shirts with tactical vests reading "Police" across the back. The men noticed her recording moments earlier and began to back up toward her to block her view. About 27 seconds into the video, a third man, a deputy U.S. marshal wearing a tactical vest and carrying a rifle, walks across a front lawn toward the sidewalk where the woman is standing. The marshal wrestled the device out of her hand and smashed it on the ground. The phone's screen was shattered and the device stopped working. The woman said she began recording when she saw the law enforcement presence, their military-style weapons and a line of people being detained. http://www.latimes.com/local/lanow/la-me-ln-feds-probe-video-phone-in-south-gate-

20150421-story.html

Providing clear guidelines to law enforcement and the public can serve to ensure that interactions involving the use of a cell phone recording will be conducted in a consistent and lawful manner.

3) **Federal Courts have Recognized the First Amendment Right to Record a Police Officer Engaged in Their Duties in a Public Place:** This legislation expressly provides that it is not a crime to take a photograph or record a law enforcement officer while the officer is performing any official duty in a public place or in a place where the person taking the photograph or making the recording has a right to be.

This is consistent with 9th Circuit case law, which expressly provides that the public be permitted to film matters of public interest:

> In this Circuit, an individual has a right 'to be free from police action motivated by retaliatory animus." *Ford v. City of Yakima* (9th Cir. 2013) 706 F.3d 1188, 1193 (quoting *Skoog v. Cnty. of Clackamas* (9th Cir. 2006) 469 F.3d 1221, 1231-32.) In general, the public enjoys a "First Amendment right to film matters of public interest." *Fordyce v. City of Seattle* (9th Cir. 1995) 55 F.3d 436, 439; *see also Glik v. Cunniffe* (1st Cir. 2011) 655 F.3d 78, 82. ("the First Amendment's aegis . . . encompasses a range of conduct related to the gathering and dissemination of information . . . The filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within these principles.").
>
> "To demonstrate retaliation in violation of the First Amendment, [a plaintiff] must [show] that [Defendants] took action that would chill or silence a person of ordinary firmness from future First Amendment activities." *Skoog* at 1231-32. The Ninth Circuit has explicitly "recognized that a retaliatory police action such as an arrest or search and seizure would chill a person of ordinary firmness from engaging in future First Amendment activity. *Ford,* at 1193.
>
> Quoted from *American News and Information Services, Inc. v. William D. Gore,* (S.D.Ca. September 17, 2014, CA12-CV-2186) 2014 U.S. Dist. LEXIS 132591.)

4) **Argument in Support**: According to the *American Civil Liberties Union of California*, "There is a clear constitutional right to photograph and record the police in the performance of their duties. This right serves as an important check and balance, and provides a means for members of the public to safely and accurately record matters of public importance. Indeed, as one federal court found,

> 'The filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within these principles [of protected First Amendment activity]. Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting the free discussion of governmental affairs…[f]reedom of expression has particular significance with respect to government because [i]t is here that the state has a special incentive to repress opposition and often

> wields a more effective power of suppression…This is particularly true of law enforcement officials, who are granted substantial discretion that may be misused to deprive individuals of their liberties…Ensuring the public's right to gather information about their officials not only aids in the uncovering of abuses, but also may have a salutary effect on the functioning of government more generally.'

"(*Glik v. Cunniffe* (1st Cir. 2011) 655 F.3d 78, 82-83, internal citations and quotations omitted.) Likewise, in a 2012 letter to the Baltimore Police Department, the U.S. Department of Justice urged,

> 'Policies should affirmatively set forth the contours of individuals' First Amendment right to observe and record police officers engaged in the public discharge of their duties. Recording governmental officers engaged in public duties is a form of speech through which private individuals may gather and disseminate information of public concern, including the conduct of law enforcement officers.'

"(Jonathan M. Smith, *U.S. Dept. of Justice Letter to Baltimore City Police Dept.* (May 14, 2012) http://www.justice.gov/crt/about/spl/documents/Sharp_ltr_5-14-12.pdf.) Therefore, protecting our right to photograph and record law enforcement in the performance of their duties both strengthens our communities and ensures the proper functioning of government.

"Despite the well-established right to take photographs and make audio and video recordings of police officers, and despite the clear language of Penal Code sections 69 and 148 – which specify that only when a person uses threats or violence to deter or prevent an officer from performing the officer's duties, or when a person resists, delays, or obstructs an officer in the performance of the officer's duties should that person be punished – members of the public have nonetheless been arrested and detained for lawfully photographing and recording the police. Law enforcement officers violate the Constitution's core protections when they arrest and detain people for legally pursuing constitutionally protected activity. [1] Such violations threaten our liberties and make our communities less safe.

"By recognizing the existing constitutional right to photograph and record the police, SB 411 helps to safeguard our collective freedoms and takes an important step towards ensuring that individuals are not punished for the mere exercise of their constitutional rights."

5) **Prior Legislation**: AB 1492 (Lowenthal), of the 2009-2010 Legislative Session, would have made it illegal to fail to comply with the officer's direction to stop using a wireless telephone or other communication device, when stopped for a traffic violation. Would not have prohibited a person from using a wireless telephone or other communication device to record, tape, or otherwise film anything that occurs during a traffic stop. AB 1492 was held in the Assembly Public Safety Committee.

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[1] The use of police authority against individuals to deter their protected speech – which includes photography – is unconstitutional. (*See Duran v. City of Douglas*, 904 F.2d 1372, 1375-78 (9th Cir. 1990) (holding that a police officer's traffic stop and subsequent arrest of an individual who directed obscene gestures and words toward that officer was unlawful because it was well-established that police officers may not exercise their authority for personal motives, especially in response to an individual's criticism or insults); *see also Beck v. City of Upland*, 527 F.3d 853, 871 (9th Cir. 2008) (holding that *Duran* clearly established that police officers could not use their power to retaliate against an individual for his free speech).

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (Sponsor)
California Attorneys for Criminal Justice (Co-Sponsor)
Conference of California Bar Associations (Co-Sponsor)
Alameda County Board of Supervisors
Alliance for Boys and Men of Color
American Civil Liberties Union of California
Asian Law Alliance
Bill of Rights Defense Committee
California Immigrant Policy Center
California Newspaper Publishers Association
Californians United for a Responsible Budget
City of Oakland
Consumer Electronics Association
Courage Campaign
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Legal Services for Prisoners with Children
Los Angeles Black Worker Center
NAACP – California State Conference
PolicyLink
Progressive Christians Uniting
19 private individuals

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: June 30, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 424 (Pan) – As Amended April 21, 2015

SUMMARY: Allows a university or college police officer to eavesdrop in any criminal investigation relating to sexual assault or other sexual offense, and to wear body worn-cameras. Specifically, **this bill**:

1) Authorizes any POST-certified chief of police, assistant chief of police, or police officer of a university or college campus acting within the scope of his or her authority, to overhear or record any communication in any criminal investigation related to sexual assault or other sexual offense.

2) Provides that that nothing in existing privacy statutes shall prohibit any POST-certified chief of police, assistant chief of police, or police officer of a university or college campus from using or operating body-worn cameras.

3) States that that the provisions of this bill shall not be used to impinge upon the lawful exercise of constitutionally protected rights of free speech, or the constitutionally protected right of personal privacy.

EXISTING LAW:

1) Establishes that a member of the University of California (UC) Police Department whose primary duty is the enforcement of the law within the specified jurisdictional areas is a peace officer. (Pen. Code, § 830.2 subd. (b).)

2) Limits the authority of a member of the UC Police Department to the UC campuses, and an area within one mile of the exterior boundaries of each campus, and other properties owned or operated by the Regents of the University of California. (Ed. Code, § 92600.)

3) Establishes that a member of the California State University (CSU) Police Department whose primary duty is the enforcement of the law within the specified jurisdictional areas is a peace officer. (Pen. Code, § 830.2 subd (c).)

4) Limits the authority of a member of the CSU Police Department to the CSU campuses, an area within one mile of the exterior boundaries of each campus, and other CSU owned or operated properties. (Ed. Code, § 89560.)

5) States that the Legislature hereby declares that advances in science and technology have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications and that the invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise

of personal liberties and cannot be tolerated in a free and civilized society. The Legislature by this chapter intends to protect the right of privacy of the people of this state. The Legislature recognizes that law enforcement agencies have a legitimate need to employ modern listening devices and techniques in the investigation of criminal conduct and the apprehension of lawbreakers. Therefore, it is not the intent of the Legislature to place greater restraints on the use of listening devices and techniques by law enforcement agencies than existed prior to the effective date of this chapter. (Pen. Code, § 630.)

6) Generally prohibits wiretapping, eavesdropping, and using electronic devices to record or amplify a confidential communication. Provides that any evidence so obtained is inadmissible in any judicial, administrative, or legislative proceeding. (Pen. Code, §§ 631, 632, 632.5, 632.6, and 632.7.)

7) Exempts the Attorney General, any district attorney, specified peace officers such as city police and county sheriffs, and a person acting under the direction of an exempt agency from the prohibitions against wiretapping and other related activities to the extent that they may overhear or record any communication that they were lawfully authorized to overhear or record prior to the enactment of the prohibitions. Provides that any evidence so obtained is admissible in any judicial, administrative, or legislative proceeding. (Pen. Code, § 633.)

8) Permits one party to a confidential communication to record the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person, or a violation of the law against obscene, threatening, or annoying phone calls. Provides that any evidence so obtained is admissible in a prosecution for such crimes. (Penal Code Section 633.5)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Penal Code Section 633 allows sworn officers to record the statements of suspects without notifying them, which would otherwise be prohibited under state wiretapping laws. This is most often utilized during suspect interviews/interrogations, in-car recordings of suspects in custody, and in a pretext phone call situation. A pretext phone call is the recording of a conversation between a victim and a known suspect arranged by law enforcement to gain admissions or other incriminating statements. This technique provides some of the best evidence in cases of date rape and other crimes involving no independent witnesses.

"Unfortunately, POST certified officers who protect campuses such as the California State University and University of California systems were not among those listed within PC 633, while virtually all other police entities in the state were included. The exact cause of this omission is difficult to ascertain, however, it is clear today that college and university law enforcement entities need the ability to obtain these recordings as dictated by their investigations. Not only does this omission undermine effective law enforcement, it has the effect of prohibiting use of Body Worn Cameras by college and university officers in some circumstances.

"The California College and University Police Chiefs Association's members have a significant responsibility for protecting a large at-risk population. College and University chiefs of police in California are responsible for providing front-line public safety protection for three million students and employees on their campuses.

"College and university police departments meet the same POST training and certification requirements of every municipal police and county sheriff agency and, just like those agencies, engage in ongoing training to continually enhance their knowledge and professionalism.

"Although not generally realized, officers in a college and university environment are charged with the handling of some of the most serious events in our society. According to a study by the Federal Bureau of Investigation, there were 39 incidents that occurred in an educational environment in the United States between 2000 and 2013. These incidents at school and college campuses accounted for some of the highest casualty counts in the nation. College and university police officers are also responsible for investigating sexual assaults against students, which is a burgeoning problem given the availability of alcohol, the pernicious presence of controlled substances used to facilitate a sexual assault and a newfound absence of parental supervision.

"In addition to crimes like active shooter and sexual assault, college and university police agencies deal with the same array of criminal activity that takes place in a non-campus environment. Campuses are not cocooned bubbles and criminal activity truly knows no jurisdictional boundaries. Over the most recent two year period, there were nearly six thousand serious crimes committed on our campuses. These crimes, which are required to be reported pursuant to the Clery Act, include murder, manslaughter, sexual assaults, robbery, aggravated assaults, burglary, vehicle thefts and arson."

2) **Legislative History and Intent**: Current law declares that "advances in science and technology have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications and that the invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise of personal liberties and cannot be tolerated in a free and civilized society." (Penal Code Section 630.) Current law also recognizes that "law enforcement agencies have a legitimate need to employ modern listening devices and techniques in the investigation of criminal conduct and the apprehension of lawbreakers." (Id.) The Legislature crafted Penal Code Section 633 to balance the two concerns by only granting authority to eavesdrop and record to limited law enforcement agencies. Does expanding exempt law enforcement agencies to include university peace officers maintain the balance of these public policy concerns?

   As noted above, various sections of the Penal Code generally prohibit eavesdropping and recording communications without the consent of all parties to the communication. Penal Code Section 633 permits specified law enforcement agencies to overhear and record any communication that they could lawfully overhear or record prior to the enactment of these prohibitions. The type of communications that law enforcement agencies could lawfully overhear and record without a court order, as defined by decisional law, are communications with no expectation of privacy or with the consent of one party. (See *Katz v. United States*, 389 U.S. 347 (1967); *United States v. White*, 401 U.S. 745 (1971).) In practice, this permits

the specified law enforcement agencies to record communications by an undercover officer, an informant wearing a "body-wire," or recording telephone conversations with the officer or informant.

3) **Prior Legislation**:

a) AB 992 (Spitzer), of the 2005-2006 Legislative Session, added peace officers employed by the UC and CSU to the list of specified law enforcement agencies exempt from prohibitions against overhearing and recording communications without an individual's consent. AB 992 failed passage in the Senate Public Safety Committee.

b) AB 1884 (Spitzer), of the 2003-2004 Legislative Session, added city attorneys prosecuting state law misdemeanor cases to the list of law enforcement officers who are authorized to record or overhear communications. AB 1884 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Narcotics Officers Association
California Police Chiefs Association
Los Angeles Police Protective league
Riverside Sheriffs Association

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: June 30, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 504 (Lara) – As Amended June 1, 2015

SUMMARY: Provides that only a person 26 years of age or older may be charged a fee for petitioning the court for an order sealing his or her record. Specifically, **this bill**:

1) Prohibits an unfulfilled order of restitution that has been converted to a civil judgment from barring the sealing of a record pursuant to provisions of law related to sealing of juvenile records.

2) States that outstanding restitution fines and court-ordered fees shall not be considered when assessing whether a petitioner's rehabilitation has been attained to the satisfaction of the court and shall not be a bar to sealing a record.

3) Recasts provisions within the existing statute into new subdivisions.

EXISTING LAW:

1) States that a person who petitions for an order sealing a juvenile misdemeanor record may be required to reimburse the court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court, not to exceed $150, and to reimburse any county for the actual cost of services rendered, whether or not the petition is granted, at a rate to be determined by the county board of supervisors, not to exceed $150, and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted, at a rate to be determined by the city council, not to exceed $150. (Pen. Code, § 1203.45, sub. (g).)

2) Provides in the event a petition is filed for an order sealing a record, the father, mother, spouse, or other person liable for the support of a minor, that person if he or she is an adult, or the estate of that person, may be required to reimburse the county and court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed $150. Ability to make this reimbursement shall be determined by the court and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services. (Welf. & Inst. Code, § 903.3, subd. (b).

3) States that any person who was under the age of 18 when he or she was arrested for a misdemeanor, may petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the

records in the case, including any records of arrest and detention, in certain circumstances. (Pen. Code, § 851.7.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 504, The Starting Over Strong Initiative, offers us a chance to improve economic opportunities for youth by removing the juvenile expungement fee. In California, we have youth who have served their time for minor misdemeanors and are now ready to turn their lives around. This bill gives youth an opportunity to succeed and become responsible, law abiding citizens, which is the ultimate goal of our corrections and rehabilitation system."

2) **Background**: According to the background materials provided by the author's office, "Under current law, the records-sealing fee serves as an obstacle for a youth's successful reentry. Adjudicated youth who seek to clear their records must pay $150 to petition the court to seal his or her records. Filing the petition is a risk, because payment does not guarantee expungement, yet many of these youth have minor misdemeanors and will be eligible for expungement.

   "The current law is cost-prohibitive and counterintuitive. Without sealed records, these youth will have limited opportunities and will likely recidivate. When employers and landlords conduct background checks on applicants, a juvenile record can be used as a basis for a denial. Sealing records is the best way to ensure that these youth's past mistakes do not continuously hinder their future opportunities. As long as the fee remains as an obstacle to these youth's rehabilitation, record sealing is an ineffective tool.

   "SB 504 has the potential to create significant economic benefits once record sealing is more accessible to youth. As adjudicated youth are able to expunge their records they also have increased chances of getting employed and securing housing. Employment offers these youth a chance to contribute as taxpaying citizens in the state thus reducing their chances of recidivism and further decreasing the potential costs of incarceration."

3) **Sealing and Destruction of Records**: Minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) A person may have his or her juvenile court records sealed by petitioning the court "five years or more after the jurisdiction of the juvenile court has terminated over [the] person adjudged a ward of the court or after [the] minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18." (Welf. & Inst. Code, § 781, subd. (a).) Once the court has ordered the records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events. (*Ibid.*) The relief consists of sealing all of the records related to the case, including the arrest record, court records, entries on dockets, and any other papers and exhibits. The court must send a copy of the order to each agency and official named in the petition for sealing records, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. (*Ibid.*) For minors who are convicted of a misdemeanor in adult

court, Penal Code Section 1203.45 authorizes sealing of such records.

Current statutes provide that a parent, spouse, or other person liable for the support of a minor person, the minor when he or she becomes an adult, or the estates of those persons, is liable for the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records. This bill would limit the existing fees for petitioning the court to seal records to persons 26 years of age or older. This bill would also specify that an unfulfilled order of restitution that has been converted to a civil judgment or outstanding restitution fines and court-ordered fees shall not be a bar to sealing a record.

4) **Argument in Support**: According to *Legal Services for Prisoners with Children*, the sponsor of this bill, "Juvenile records can create barriers to employment and housing for young people. An unsealed juvenile record can appear on a background checks and lead to an unfairly adverse employment or housing decision. Without stable employment and housing, there is a higher chance that young people will recidivate and become involved in the adult criminal justice system.

"Current law allows counties to charge young people up to $150 for sealing their juvenile record; a prohibitively expensive cost for California's poor youth. An inability to access the juvenile record remedy can result in an inability to access stable employment and housing.

"SB 504 makes the record sealing process more affordable for one of our state's most vulnerable populations—its youth. This fee, as currently imposed, does not generate substantial revenue, and, even if it did, we should use this opportunity to invest in and support our youth instead of saddling them with additional financial burden. By eliminating the fee for record sealing for youth under the age of twenty-six, SB 504 will increase public safety and reduce recidivism."

5) **Argument in Opposition**: According to the *California District Attorneys Association*, "Of particular concern is the language providing that outstanding restitution shall not be a bar to having a record sealed. Making restitution is a critical aspect of the rehabilitation process, both for offenders and crime victims. Prohibiting the court from considering whether the juvenile offender has satisfied his or her restitution requirements provides a skewed perspective on their rehabilitative efforts, and asks the court to make a record sealing determination with only partial information."

6) **Related Legislation**:

   a) AB 666 (Stone) requires records in the custody of law enforcement agencies, the probation department, or any other public agency having records pertaining to the case, to also be sealed, in a case where a court has ordered a juvenile's records to be sealed, as specified. AB 666 is pending hearing by the Senate Committee on Public Safety.

   b) AB 989 (Cooper) would authorize the district attorney and probation department to access sealed juvenile records for limited purposes. AB 989 is pending hearing by the Senate Committee on Public Safety.

7) **Prior Legislation**:

a) AB 1756 (Skinner), of the 2013-2014 Legislative Session, would have provided that only a person 26 years of age or older may be charged a fee for petitioning the court for an order sealing his or her record. AB 1756 was held in the Senate Committee on Appropriations' Suspense File.

b) SB 1038 (Leno), Chapter 249, Statutes of 2014, provides for the automatic dismissal of juvenile petitions and sealing of records when a juvenile offender successfully completes probation.

c) AB 1006 (Yamada), Chapter 269, Statute of 2013, requires, on and after January 1, 2015, courts and probation departments, to ensure information regarding the potential sealing of juvenile court records is provided to minors in juvenile proceedings, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Legal Services for Prisoners with Children (Sponsor)
East Bay Community Law Center (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
A New Way of Life Re-Entry Project
Alameda County Board of Supervisors
All of Us or None of Us
Alliance for Boys and Men of Color
American Civil Liberties Union of California
American Friends Service Committee
Asian Americans Advancing Justice – Los Angeles
Asian Americans Advancing Justice – Sacramento
At the Crossroads
Berkeley Youth Alternatives
California Coalition of Women Prisoners
Californians for Safety and Justice
Californians United for a Responsible Budget
Center on Juvenile and Criminal Justice
Children's Defense Fund – California
City of Richmond
City of Union City
Coalition for Police Accountability
Community Works' Project WHAT!
Courage Campaign
Dignity & Power Now
Drug Policy Alliance
Ella Baker Center for Human Rights
Fair Chance Project
Free Indeed Reentry Project
Friends Committee on Legislation of California
Jeff Adachi, San Francisco Public Defender
Justice Now
Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Los Angeles Area Chamber of Commerce
Justice Now
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
National Center for Youth Law
National Employment Law Project
PolicyLink
Root & Rebound
RYSE Youth Center
Starting Over Inc.
Urban Peace Movement
Violence Prevention Coalition of Greater Los Angeles
W. Hayward Burns Institute
Youth Law Center

Opposition

California District Attorneys Association

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Date of Hearing: June 30, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 518 (Leno) – As Amended May 20, 2015
As Proposed to be Amended in Committee

SUMMARY: Requires the Victims Compensation and Government Claims Board (Board) to use a specified evidence-based model when giving a grant to a Trauma Recovery Center (TRC), as specified. Specifically, **this bill**:

1) Requires the Board to use the evidence-based Integrated Trauma Recovery Services (ITRS) model developed by the State Pilot Project Trauma Recovery Center (State Pilot TRC) when it provides grants to trauma recovery centers.

2) Specifies that programs using the ITRS model shall include the following:

   a) Serve and reach out to victims unable to access traditional services. These include those who are homeless, mentally ill, of diverse ethnicity, immigrants and refugees, disabled, suffering from severe trauma and psychological symptoms or issues and juveniles, including juveniles who have been through the dependency or delinquency systems.

   b) Serve victims of a wide range of crimes, including sexual assault and other forms of violence.

   c) Use a structured evidence-based program of mental health and support services for victims of violence and family members of homicide victims. The services shall include crisis intervention, case management, individual and group treatment and shall be provided so as to increase access, including providing services in the community and the homes of clients.

   d) Employ multidisciplinary, integrated trauma specialists including psychiatrists, psychologists and social workers who are licensed clinicians or engaged in supervised completion of licensure. Clinical supervision and support shall be given to staff on a weekly basis.

   e) Psychotherapy shall be provided by a single point of client contact with a trauma specialist, with support from the team and a collaboratively developed treatment plan.

   f) Provide aggressive case management, including accompanying clients to treatment appointments, community appointments and court appearances. Case management shall include assisting clients in filing for victim compensation, police reports, housing assistance and other basic support needs.

   g) Clients shall not be excluded from treatment solely on the basis of emotional or behavioral issues resulting from trauma, such as drug abuse, serious anxiety or low initial

motivation.

h) TRC services shall incorporate established, evidence-based practices, such as cognitive behavioral therapy, dialectical behavior and cognitive processing.

i) TRC goals shall be to decrease psychological distress and improve long-term positive outcomes.

j) Treatment shall be given for up to 16 sessions, with an extension for those with a "primary focus on trauma" after special consideration with a supervisor. Extensions beyond 32 sessions shall require the approval of a clinical steering group.

3) Requires the Board, upon appropriation of funds from the Victim Restitution Fund by the Legislature, to enter into an interagency agreement with the State Pilot TRC to establish the pilot project as the State of California's Trauma Recovery Center of Excellence (TR-COE). The agreement would require the TR-COE to support the Board by defining the core elements of the evidence-based practice and providing training materials, technical assistance, and ongoing consultation and programming to the Board and to each center to enable the grantees to replicate the evidence-based approach. Specifies that the agreement shall require the following:

a) The Board shall consult with the TR-COE in developing language for grant application and criteria for reviewing grants.

b) The TR-COE shall define an evidence-based practice.

c) The TR-COE shall assist the Board in providing training materials, technical assistance and provide ongoing consultation with the Board.

d) The TR-COE shall assist in designing a multisite evaluation for TRCs.

4) Finds and declares the following:

a) Victims of violent crime may benefit from access to structured programs of practical and emotional support. Research shows that evidence-based trauma recovery approaches are more effective, at a lesser cost, than customary fee-for-service programs. State-of-the-art fee-for-service funding increasingly emphasizes funding best practices, established through research, that can be varied but have specific core elements that remain constant from grantee to grantee. The public benefits when government agencies and grantees collaborate with institutions with expertise in establishing and conducting evidence-based services.

b) The Trauma Recovery Center at San Francisco General Hospital, University of California, San Francisco (UCSF TRC), is an award-winning, nationally-recognized program created in 2001 in partnership with the Board. The UCSF TRC was established by the Legislature as a four-year demonstration project to develop and test a comprehensive model of care as an alternative to fee-for-service care reimbursed by victim restitution funds. It was designed to increase access for crime victims to these

funds.

c) Specifies that the UCSF TRC is the State Pilot TRC.

d) The results of this four-year demonstration project have established that the State Pilot TRC model was both clinically effective and cost effective when compared to customary fee-for-service care. Seventy-seven percent of victims receiving trauma recovery center services engaged in mental health treatment, compared to 34 % receiving customary care. The State Pilot Project TRC model increased the rate by which sexual assault victims received mental health services from 6 % to 71 %, successfully linked 53 % to legal services, 40 % to vocational services, and 31 % to safer and more permanent housing. Trauma recovery center services cost 34 % less than customary care.

e) Systematic training, technical assistance, and ongoing standardized program evaluations are needed to ensure that all new state-funded trauma recovery centers are evidence-based, accountable, and clinically effective and cost effective.

f) By creating a TR-COE, it is the intent of the Legislature that these services will be delivered in a clinically effective and cost-effective manner, and that victims of crime in California will have increased access to needed services.

EXISTING LAW:

1) Creates the Victims of Crime Program, administered by the Board , to reimburse victims of crime for the pecuniary losses they suffer as a direct result of criminal acts. Indemnification is made from the Restitution Fund, which is continuously appropriated to the board for these purposes. (Gov. Code §§ 13950-13968.)

2) Authorizes reimbursement to a victim for "[t]he medical or medical related expenses incurred by the victim." (Gov. Code § 13957, subd. (a)(1).)

3) Provides that the Board shall enter into an interagency agreement with the UCSF to establish a recovery center for victims of crime at the San Francisco General Hospital for comprehensive and integrated services to victims of crime, subject to conditions set by the board. The University Regents must approve the agreement. The section shall only be implemented to the extent that funding is appropriated for that purpose. (Gov. Code § 13974.5.)

4) Includes the Safe Neighborhoods and Schools Act of 2014. As relevant to this bill, the act does the following: (Gov. Code § 7599-7599.2.)

   a) Reclassifies controlled substance felony and alternate felony-misdemeanor crimes as misdemeanors, except for defendants convicted of a sex offense, a specified drug crime involving specified weight of volume of the drug, a crime where the defendant used or was armed with a weapon, a homicide, solicitation of murder and any crime for which the sentence is a life term.

b) Requires the Director of Finance, beginning in 2016, to calculate the savings from the reduced penalties.

c) The Controller transfers the amount of savings calculated by the Finance Director and transfers that amount from the General Fund to the "Safe Neighborhoods and Schools Fund.

d) The Controller then distributes the money in the fund according to the following formula:

   i) 25% to the Department of Education for a grant program to public agencies to improve outcomes for kindergarten through high school students at risk of dropping out of school or are crime victims.

   ii) 10% to the Victims of Crime Program to fund for grants to TRCs.

   iii) 65% to the Board of State and Community Corrections for a grant program to public agencies for mental health and drug abuse treatment and diversion programs, with an emphasis on reducing recidivism.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The physical and psychological trauma experienced by victims of crime requires early treatment and comprehensive care in order to avoid negative outcomes for the individual victim, as well as their families and communities. In California today, victims and survivors of crime often face significant hurdles in accessing the immediate and comprehensive support needed to recover adequately, and are often unaware that the state offers assistance for certain health and support services.

   "Victims must navigate an often difficult and bureaucratic process in accessing state services, involving multiple agencies across different locations. If a victim is ultimately approved for state support, they may wait 3 months or more to access victim's compensation funds to help cover the costs of critical support services.

   "Without timely holistic support, victims often suffer long term mental health challenges and struggle to take care of their families, maintain employment and retain stable housing. Free, holistic care that is easy to access would be life changing for many.

   "In order to address this pressing need, a grant program to replicate a successful Trauma Recovery Center (TRC) in San Francisco was created in 2013. This program, housed at the VCGCB, funds $2 million in grants annually.

   "The TRC treatment model was developed in 2001 to address the multiple barriers victims face recovering from crime. The TRC model utilizes a comprehensive, flexible approach that integrates three modes of service: assertive outreach, clinical case management, and evidence-based trauma-focused therapies.

"The model is designed to meet the unique needs of crime victims suffering from trauma by utilizing a multidisciplinary staff to provide direct mental health services and health treatment while coordinating services with law enforcement and other social service agencies. All of these services are housed under one roof.

"Survivors of crime who received services through the TRC saw significant increases in health and wellness. Seventy-four percent of those served showed an improvement in mental health, and 51% demonstrated an improvement in physical health.

"TRC services have also improved community engagement and public safety. People who receive services at the TRC are 56% more likely to return to employment, 44% more likely to cooperate with the district attorney, and 69% more likely to generally cooperate with law enforcement. All of these benefits are provided at a 33% lower cost than traditional providers.

"In order to ensure these same outstanding outcomes and savings, and to ensure fidelity to the TRC model, clear but flexible guidelines must be added to the statute governing the grant program."

2) **Background:** According to the background submitted by the author, by setting clear guidelines and providing training for new TRCs, this bill will ensure that victims of crime in California receive the comprehensive and timely services they need in order to heal, and to avoid negative economic consequences for themselves and their communities. The physical and psychological trauma experienced by victims of crime requires early treatment and comprehensive care. However, in California today, victims and survivors of crime often face significant hurdles in accessing the immediate and comprehensive support needed to recover adequately, and are often unaware that the state offers assistance for certain health and support services.

   In order to address this pressing need, a grant program to replicate the successful TRC pioneered by UC San Francisco was created in 2013. This program, housed at the Board, funds $2 million in grants annually. The TRC treatment model was developed in 2001 to address the multiple barriers victims face recovering from crime, and utilizes a comprehensive, flexible approach designed to meet the unique needs of crime victims suffering from trauma. TRCs utilize a multidisciplinary staff to provide direct mental health services and health treatment while coordinating services with law enforcement and other social service agencies, and all services are housed under one roof, with one coordinating point of contact for the victim.

   The TRC model has proven to be extremely successful, and since the grant program began, survivors of crime who received services through the TRC saw significant increases in health and wellness. 74% of those served showed an improvement in mental health, and 51% demonstrated an improvement in physical health. People who receive services at the TRC are 56% more likely to return to employment, 44% more likely to cooperate with the district attorney, and 69% more likely to generally cooperate with law enforcement. All of these benefits are provided at a 33% lower cost than traditional providers.

   The Legislative Analyst's Office (LAO) estimates future additional funding for the TRC grant program at anywhere between $10-20 million annually, stemming from language in

Proposition 47 of 2014 that directed 10% of the savings realized from the proposition to this program. Proposition 47 was passed by nearly 60% of the California electorate, and the LAO has recommended that these savings be spent as effectively as possible. SB 518 will ensure just that, and is consistent with the recommendations of the LAO in their recent report "Improving State Programs for Victims of Crime."

3) **Proposition 47 and Trauma Recovery Center Funding:** On November 4, 2014, California voters approved Proposition 47, also known as the Safe Neighborhoods and Schools Act, which reduced penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes. Proposition 47 also allows inmates serving sentences for crimes affected by the reduced penalties to apply to be resentenced. Proposition 47 directed 10% of the savings realized from the proposition to trauma recovery centers.

   According to the California Secretary of State's Web site, 59.6 % of voters approved Proposition 47. (See <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf> [as of Mar. 14, 2015].) The purpose of the measure was "to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 70.) One of the ways the measure created savings was by requiring misdemeanor penalties instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession for personal use, unless the defendant has prior convictions for specified violent crimes. (*Ibid.*)

   Four months into its implementation, Proposition 47 has resulted in fewer inmates in state prisons and county jails. According to the Legislative Analysts' Office (LAO), "As of January 28, 2015, the inmate population in the state's prisons was about 113,500, or 3,600 inmates below the February 2015 cap, and slightly below the final February 2016 cap. The expected impact of Proposition 47 on the prison population will make it easier for the state to remain below the population cap." (LAO, *The 2015-16 Budget: Implementation of Proposition 47* (Feb. 2015), p. 10.) The LAO report also found that Proposition 47 will likely reduce the costs of criminal justice for counties, by freeing up jail beds and reducing the time probation departments need to follow prisoners after they are released. (*Id.* at p. 17.)

4) **Argument in Support**: According to *Californians for Safety and Justice,* "Californians for Safety and Justice is a nonprofit organization of Californians from diverse sectors joining together to replace prison and justice system waste with smart justice solutions that increase safety and reduce costs. Our work includes a statewide network of over 5,000 crime victims, Crime Survivors for Safety and Justice, a group that aims to reduce barriers to recovery for crime victims and expand victims' supports.

   "We are proud to be the sponsor of SB 518 (Leno) which would create programmatic guidelines for the Trauma Recovery Center (TRC) Grant Program and create the TRC Center of Excellence, housed at UC San Francisco, to provide systematic training, technical assistance, and ongoing standardized program evaluations to ensure program fidelity. This bill will help provide quality trauma recovery services to crime victims and survivors across the state.

   "The Trauma Recovery Center model, pioneered in San Francisco in 2001, provides a comprehensive, flexible approach that integrates three modes of service – assertive outreach,

clinical case management, and evidence-based trauma-focused therapies. This model is designed to meet the special needs of crime victims suffering from trauma by utilizing a multidisciplinary staff to provide direct mental health services and health treatment while coordinating services with law enforcement and other social service agencies – all under one roof. Survivors of crime who received services through the TRC saw huge increases in health and wellness- 74% show and improvement in mental health, and 51% demonstrate an improvement in physical health. TRC services also improved community engagement and public safety. People who receive services at the TRC are 56% more likely to return to employment, and people who receive services are 44% more likely to cooperate with the district attorney, and 69% more likely to cooperate with law enforcement.

"In 2013, a grant program was created to replicate this successful TRC model in other parts of California. This program, housed at the Victim Compensation and Government Claims Board (VCGCB), totals $2 million annually. In order to ensure other TRCs have the same outstanding outcomes as the San Francisco TRC, specific programmatic guidelines must be put in place. SB 518 does exactly that, and additionally creates a Center of Excellence at the original TRC, to provide training, technical assistance, and ongoing standardized program evaluations to ensure program fidelity.

"This bill will ensure that crime victims and survivors receive quality trauma recovery services. Please vote yes on SB 518."

5) **Argument in Opposition**: According to the *California Coalition Against Sexual Assault*, "The California Coalition Against Sexual Assault (CALCASA) is formally registering our opposition to SB 518 unless the bill is amended to reflect creation and inclusion of a California Trauma Recovery Center Taskforce.

"We believe that the development of criteria for California Trauma Recovery Centers should be comprised of a diverse working group that represents the disparate needs of California communities and the victims of crime served at a local level.

"CALCASA provides leadership, vision, and resources to rape crisis centers, individuals and other entities committed to ending sexual violence. As the association for the 84 rape crisis centers serving all California, CALCASA is committed to ending sexual violence through a multifaceted approach of prevention, intervention, education, research, advocacy, and public policy.

"We strongly feel that there cannot be a "one size fit all" approach to victims services; each TRC must have the freedom to create and implement a model appropriate for the local culture and existing systems of support for victims of crime. We believe a better approach would be to develop a taskforce to establish the guidelines based on best practices in the field, with a focus on trauma recovery for survivors of all forms of violence and crimes, including consideration to the special needs of survivors of domestic violence and sexual assault.

"For these reasons, CALCASA is opposed to SB 518 unless the bill language is amended."

6) **Prior Legislation**:

a) SB 71 (Budget and Fiscal Review) , Chapter 28, Statutes of 2013, authorized the Board to administer a program to award, upon appropriation by the Legislature, up to $2,000,000 in grants, annually, to trauma recovery centers, as defined, funded from the Restitution Fund.

b) SB 733 (Leno), of the 2009-2010 legislative session, authorized the Board to evaluate applications and award grants totaling up to $3 million, up to $1.7 million per center, to multi-disciplinary TRCs that provide specified services to and resources for crime victims. SB 733 failed passage on the Senate Floor.

c) AB 1669 (Leno), of the 2007-08 Legislative Session, would have appropriated $1.5 million for the TRC at the San Francisco General Hospital. AB 1669 was vetoed.

d) AB 50 (Leno), Chapter 884, Statutes of 2006, appropriated $1.3 million for the TRC at the San Francisco General Hospital.

REGISTERED SUPPORT / OPPOSITION:

Support

American College of Emergency Physicians, California Chapter
Californians for Safety and Justice
California Attorneys for Criminal Justice
California Catholic Conference
California Psychological Association
Crime Victims United of California
Natividad Medical Foundation
San Francisco Department of Public Health
San Francisco District Attorney's Office
Society for Social Work Leadership in Health Care, California Chapter
University of California

Opposition

California Coalition Against Sexual Assault
Peace Over Violence

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

***** WORKING COPY *****

BILL NUMBER: SB 518 AMENDED

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Victims of violent crime may benefit from access to structured programs of practical and emotional support. Research shows that evidence-based trauma recovery approaches are more effective, at a lesser cost, than customary fee-for-service programs. State-of-the-art fee-for-service funding increasingly emphasizes funding best practices, established through research, that can be varied but have specific core elements that remain constant from grantee to grantee. The public benefits when government agencies and grantees collaborate with institutions with expertise in establishing and conducting evidence-based services.

(2) The Trauma Recovery Center at San Francisco General Hospital, University of California, San Francisco (UCSF TRC), is an award-winning, nationally recognized program created in 2001 in partnership with the California Victim Compensation and Government Claims Board. ***The UCSF TRC is hereby recognized as the State Pilot Project Trauma Recovery Center (State Pilot TRC).*** The ~~UCSF TRC~~ ***State Pilot TRC*** was established by the Legislature as a four-year demonstration project to develop and test a comprehensive model of care as an alternative to fee-for-service care reimbursed by victim restitution funds. It was designed to increase access for crime victims to these funds.

(3) The results of this four-year demonstration project have established that the ~~UCSF TRC~~ ***State Pilot TRC*** model was both clinically effective and cost effective when compared to customary fee-for-service care. Seventy-seven percent of victims receiving trauma recovery center services engaged in mental health treatment, compared to 34 percent receiving customary care. The ~~UCSF TRC~~ ***State Pilot TRC*** model increased the rate by which sexual assault victims received mental health services from 6 percent to 71 percent, successfully linked 53 percent to legal services, 40 percent to vocational services, and 31 percent to safer and more permanent housing. Trauma recovery center services cost 34 percent less than customary care.

(b) The Legislature further finds and declares all of the following:

(1) Systematic training, technical assistance, and ongoing standardized program evaluations are needed to ensure that all new state-funded trauma recovery centers are evidence-based, accountable, and clinically effective and cost effective.

(2) By creating a Trauma Recovery Center of Excellence (TR-COE), it is the intent of the Legislature that these services will be delivered in a clinically effective and cost-effective manner, and that victims of crime in California will have increased access to needed services.

SEC. 2. Section 13963.1 of the Government Code is amended to read:

13963.1. (a) The Legislature finds and declares all of the following:

(1) Without treatment, approximately 50 percent of people who survive a traumatic, violent injury experience lasting or extended psychological or social difficulties. Untreated psychological trauma often has severe economic consequences, including overuse of costly medical services, loss of income, failure to return to gainful employment, loss of medical insurance, and loss of stable housing.

(2) Victims of crime should receive timely and effective mental health treatment.

(3) The board shall administer a program to evaluate applications and award grants to trauma recovery centers.

(b) The board shall award a grant only to a trauma recovery center that meets all of the following criteria:

(1) The trauma recovery center demonstrates that it serves as a community resource by providing services, including, but not limited to, making presentations and providing training to law enforcement, community-based agencies, and other health care providers on the identification and effects of violent crime.

(2) Any other related criteria required by the board.

(3) The trauma recovery center uses the core elements established in Sections 13963.2 and 13963.3.

(c) It is the intent of the Legislature to provide an annual appropriation of two million dollars ($2,000,000) per year. All grants awarded by the board shall be funded only from the Restitution Fund.

(d) The board may award a grant providing funding for up to a maximum period of three years. Any portion of a grant that a trauma recovery center does not use within the specified grant period shall revert to the Restitution Fund. The board may award consecutive grants to a trauma recovery center to prevent a lapse in funding. The board shall not award a trauma recovery center more than one grant for any period of time.

(e) The board, when considering grant applications, shall give preference to a trauma recovery center that conducts outreach to, and serves, both of the following:

(1) Crime victims who typically are unable to access traditional services, including, but not limited to, victims who are homeless, chronically mentally ill, of diverse ethnicity, members of immigrant and refugee groups, disabled, who have severe trauma-related symptoms or complex psychological issues, or juvenile victims, including minors who have had contact with the juvenile dependency or justice system.

(2) Victims of a wide range of crimes, including, but not limited to, victims of sexual assault, domestic violence, physical assault, shooting, stabbing, and vehicular assault, and family members of homicide victims.

(f) The trauma recovery center sites shall be selected by the board through a well-defined selection process that takes into account the rate of crime and geographic distribution to serve the greatest number of victims.

(g) A trauma recovery center that is awarded a grant shall do both of the following:

(1) Report to the board annually on how grant funds were spent, how many clients were served (counting an individual client who receives multiple services only once), units of service, staff productivity, treatment outcomes, and patient flow throughout both the clinical and evaluation components of service.

(2) In compliance with federal statutes and rules governing federal matching funds for victims' services, each center shall submit any forms and data requested by the board to allow the board to receive the 60 percent federal matching funds for eligible victim services and allowable expenses.

(h) For purposes of this section, a trauma recovery center provides, including, but not limited to, all of the following resources, treatments, and recovery services to crime victims:

(1) Mental health services.

(2) Assertive community-based outreach and clinical case management.

(3) Coordination of care among medical and mental health care providers, law enforcement agencies, and other social services.

(4) Services to family members and loved ones of homicide victims.

(5) A multidisciplinary staff of clinicians that includes psychiatrists, psychologists, social workers, case managers, and peer counselors.

SEC. 3. Section 13963.2 is added to the Government Code, to read:

13963.2. ***The Trauma Recovery Center at San Francisco General Hospital, University of California, San Francisco (UCSF TRC) is recognized as the State Pilot Program Trauma Recovery Center (State Pilot TRC).*** The California Victim Compensation and Government Claims Board shall use the evidence-based Integrated Trauma Recovery Services (ITRS) model developed by the ~~UCSF TRC~~ ***State Pilot TRC*** when it selects, establishes, and implements trauma recovery centers pursuant to Section 13963.1. In replicating programs funded by the California Victim Compensation and Government Claims Board, the ITRS can be modified to adapt to different populations, but it shall include the following core elements:

(a) Provide outreach and services to crime victims who typically are unable to access traditional services, including, but not limited to, victims who are homeless, chronically mentally ill, of diverse ethnicity, members of immigrant and refugee groups, disabled, who have severe trauma-related symptoms or complex psychological issues, or juvenile victims, including minors who have had contact with the juvenile dependency or justice system.

(b) Victims of a wide range of crimes, including, but not limited to, victims of sexual assault, domestic violence, physical assault, shooting, stabbing, and vehicular assault, human trafficking, and family members of homicide victims.

(c) A structured evidence-based program of mental health and support services provided to victims of violent crimes or family members of homicide victims that includes crisis intervention, individual and group treatment, medication management, substance abuse treatment, case management, and assertive outreach. This care shall be provided in a manner that increases access to services and removes barriers to care for victims of violent crime. This includes providing services in the client's home, in the community, or other locations outside the agency.

(d) Staff shall include a multidisciplinary team of integrated trauma specialists that includes psychiatrists, psychologists, and social workers. The integrated trauma specialist shall be a licensed clinician, or a supervised clinician engaged in completion of the applicable licensure process. Clinical supervision and other supports are provided to staff on a weekly basis to ensure the highest
quality of care and to help staff deal constructively with vicarious trauma.

(e) Psychotherapy and case management shall be provided by a single point of contact for the client, that is an individual trauma specialist, with support from an integrated trauma treatment team. In order to ensure the highest quality of care, the treatment team
shall collaboratively develop treatment plans in order to achieve positive outcomes for clients.

(f) Services shall include assertive case management, including, but not limited to, a trauma specialist accompanying the client to court proceedings, medical appointments, or other community appointments as needed. Case management services shall include, but not be limited to, assisting clients file victim compensation applications, file police reports, help with obtaining safe housing and financial entitlements, linkages with medical care, assistance in return to work, liaison with other community agencies, law enforcement, and other support services as needed.

(g) Clients shall not be excluded from services solely on the basis of emotional or behavioral issues resulting from trauma, including, but not limited to, substance abuse problems, low initial motivation, or high levels of anxiety.

(h) Trauma recovery services shall incorporate established

evidence-based practices, including, but not limited to, motivational interviewing, harm reduction, seeking safety, cognitive behavioral therapy, dialectical behavior, and cognitive processing therapy.

(i) The goals of a trauma recovery center shall be to decrease psychosocial distress, minimize long-term disability, improve overall quality of life, reduce the risk of future victimization, and promote post-traumatic growth.

(j) In order to ensure that clients are receiving targeted and accountable services, treatment shall be provided up to 16 sessions. For those with ongoing problems and a primary focus on trauma, treatment may be extended after special consideration with the clinical supervisor. Extension beyond 32 sessions shall require approval by a clinical steering and utilization group that considers the client's progress in treatment and remaining need.

SEC. 4. Section 13963.3 is added to the Government Code, to read:

13963.3. (a) Upon appropriation of funds from the Victim Restitution Fund by the Legislature, the board shall enter into an interagency agreement with the Trauma Recovery Center of the Regents of the University of California, San Francisco, to establish the ~~UCSF TRC~~ ***State Pilot TRC*** as the State of California's Trauma Recovery Center of Excellence (TR-COE). This agreement shall require:

(1) The board to consult with the TR-COE in developing materials and criteria for grant applications pursuant to Section 13963.1.

(2) The TR-COE to define the core elements of the evidence-based practice.

(3) The board to consult with the TR-COE in the replication of the integrated trauma recovery services approach.

(4) The TR-COE to assist by providing training materials, technical assistance, and ongoing consultation to the board and to each center to enable the grantees to replicate the evidence-based approach.

(5) The TR-COE to assist in evaluation by designing a multisite evaluation to measure adherence to the practice and effectiveness of each center.

(b) This section does not apply to the University of California unless the Regents of the University of California, by appropriate resolution, make this section applicable.

Date of Hearing: June 30, 2015
Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 556 (De León) – As Amended May 4, 2015

SUMMARY: Defines "application processing time" for the approval or denial of a victim's compensation claim by the California Victim Compensation Program (CalVCP). Specifically, **this bill**:

1) States that, for purposes of processing victim compensation applications under the CalVCP, "time of processing applications" means "the period of time, including all calendar days, that begins when the board first receives an application and ends when a determination is made to approve or deny the application and notice of that determination is sent to the applicant."

2) Requires the Victim Compensation and Government Claims Board (board) to annually post on its Internet Web site its current average time of processing applications, the number of applications approved and denied, and the number of incomplete applications received.

EXISTING LAW:

1) Establishes the board to operate the CalVCP. (Gov. Code, § 13950 et. seq.)

2) Provides than an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd.(a).)

3) States that, except as provided by specified sections of the Government Code, a person shall be eligible for compensation when all of the following requirements are met:

   a) The person form whom compensation is being sought any of the following:

      i) A victim.

      ii) A derivative victim.

      iii) A person who is entitled to reimbursement for funeral, burial or crime scene clean-up expenses pursuant to specified sections of the Government Code.

   b) Either of the following conditions is met:

      i) The crime occurred within California, whether or not the victim is a resident of California. This only applies when the VCGCB determines that there are federal funds available to the state for the compensation of crime victims.

ii) Whether or not the crime occurred within the State of California, the victim was any of the following:

(1) A California resident.

(2) A member of the military stationed in California.

(3) A family member living with a member of the military stationed in California.

c) If compensation is being sought for derivative victim, the derivative victim is a resident of California, or the resident of another state who is any of the following:

i) At the time of the crimes was the parent, grandparent, sibling, spouse, child or grandchild of the victim.

ii) At the time of the crime was living in the household of the victim.

iii) At the time of the crime was a person who had previously lived in the house of the victim for a person of not less than two years in a relationship substantially similar to a previously listed relationship.

iv) Another family member of the victim including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

v) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

d) And other specified requirements. (Gov. Code, § 13955.)

4) States that an application shall be denied if the board finds that the victim failed to reasonably cooperate with law enforcement in prosecution of the crime. (Gov. Code, § 13956, subd. (b)(1).)

5) Authorizes the board to reimburse for pecuniary loss for the following types of losses (Gov. Code, § 13957, subd. (a)):

a) The amount of medical or medical-related expenses incurred by the victim, subject to specified limitations.

b) The amount of out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim, as specified, including peer counseling services provided by a rape crisis center.

c) The expenses of non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

d) Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death,

subject to specified limitations.

e) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services.

f) The expense of installing or increasing residential security, not to exceed $1,000, with respect to a crime that occurred in the victim's residence, upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

g) The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary.

h) Expenses incurred in relocating, as specified, if the expenses are determined by law enforcement to be necessary for the personal safety or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

6) Requires the board to approve or deny applications, based on recommendations by the board staff, within an average of 90 calendar days and no later than 180 calendar days of acceptance by the board. (Gov. Code, § 13958, subd. (a).)

7) Requires the board, if it fails to meet the 90-day average, to report to the Legislature on a quarterly basis its progress and current average processing time. (Gov. Code, § 13958, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Through the California Victim Compensation Program (CalVCP), California has been helping victims by covering the cost of bills and expenses resulting from certain violent crimes. Many times, these expenses include medical treatment, mental health services, and lost income. A person seeking assistance must first submit an application to the program to determine eligibility. However, for reasons such as leaving a box unchecked on whether the victim intends to file a civil suit or not signing the form, some applications get held up in the process for extended lengths of time. For these and other minor deficiencies, many eligible victims are stuck with paying bills out of pocket or otherwise unable to receive treatment or services.

"To curb delays, the Legislature required that CalVCP approve or deny applications within an average of 90 day and that the program report to the Legislature whenever the 90-day-average standard was not being met. CalVCP's current method of calculating application processing time, however, starts only when a completed application is received, leaving the time an application is first received, but not fully filled out, outside of the official processing time. This method is not a true reflection of how long it takes the program to process applications and may be masking issues of lengthy processing times that hinder crime victims in their efforts towards rehabilitation and moving on with their lives.

"SB 556 will help ensure that crime victims receive the financial assistance they are owed in

a timely manner by clarifying the start and end times that CalVCP uses in processing applications to determine eligibility and requiring this data be made available on the program's website."

2) **Background**: The CalVCP provides compensation for victims of violent crime. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, home security, and relocation services. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds. (See CVGCB Website <http://www.vcgcb.ca.gov/board>.)

3) **Bureau of State Audit Recommendations**: In 2008, the Bureau of State Audits conducted a review of the CalVCP. (*Victim Compensation and Government Claims Board: It Has Begun Improving the Victim Compensation Program, but More Remains to Be Done*, (Dec. 2008), <http://www.bsa.ca.gov/pdfs/reports/2008-113.pdf>.) One of the areas the bureau considered was how long it took the board to process applications. The bureau concluded that, at times, applications were not processed in a timely manner:

> State law related to eligibility determinations for the program requires the board to approve or deny applications, based on the recommendation of board staff, within an average of 90 calendar days, and no later than 180 calendar days after the acceptance date for an individual application. For the 49 applications we reviewed, the board's average processing time was 76 days, which is well within the statutory average. However, the board did not make a determination within 180 days in two instances. We also noted various instances in which the board did not demonstrate that it approved or denied the applications as promptly as it could have after receiving the information necessary to make the determination. (*Id.* at pp. 30-31.)
>
> For the 49 applications we reviewed from fiscal years 2003–04 through 2007–08, we found that the board's average processing time was 76 days, which is well within the 90-day average required under state law. However, we noted that in 16 of the 49 applications we reviewed, the board took more than 90 days from acceptance to notify the applicant of its recommended decision to approve or deny the application. Although taking more than 90 days to approve or deny an individual application is not a violation of state law, any unnecessary delays in processing contribute to crime victims waiting longer than necessary to be reimbursed for out-of-pocket expenses. Delays may also cause providers to become frustrated and stop participating in the program, reducing services available to crime victims and their families. (*Id.* at p. 31.)

The bureau discussed the board's process as follows:

> The board considers the date of acceptance to be the date that it determines it has received an application that is 'complete' rather than the date that it receives an application. State regulations describe a complete application as including, among other things, information requested from the applicant that allows board staff to confirm that the applicant is qualified and a crime report or other documentation necessary to corroborate that a qualifying crime occurred. Our legal counsel advised us that the board's interpretation does not conflict with any of the statutes

governing the processing of applications. (*Id.* at p. 32.)

This bill would specify that the application processing time begins when the board first receives an application and ends when notice of the determination to approve or deny the claim is sent to the applicant.

4) **Argument in Support**: *Californians for Safety and Justice*, the sponsor of this bill, write, "Current law requires the Victim Compensation and Government Claim Board (VCGCB) to either approve or deny a claim an average of 90 days after acceptance by VCGCB. However, there is no statutory definition of 'accepted,' leading to much longer response times for some applicants. For example, an application may not be 'accepted' because the application hasn't been signed, or because the applicant hasn't checked a box indicated whether or not a civil suit will be filed. These and other similar minor deficiencies can lead to an application not being 'accepted,' leaving the applicant in limbo waiting for a response. And because they applications are not 'accepted' the time the applicant is waiting for a response does not count towards the statutorily required 90 day response time. This can lead to needless delays for the victim in receiving services he or she is entitled to."

5) **Related Legislation**:

   a) AB 1140 (Bonta) revises various rules governing the CalVCP. AB 1140 is pending hearing in the Senate Public Safety Committee.

   b) SB 519 (Hancock) makes various changes to the CalVCP, including but not limited to expanding eligibility for compensation and revising processing standards. SB 519 is pending hearing in this committee.

6) **Prior Legislation**:

   a) SB 972 (Poochigian), Chapter 238, Statutes of 2005, made various changes to facilitate the recovery of restitution for the VCGCB.

   b) SB 1423 (Chesbro), Chapter 1141, Statutes of 2002, recast and revised numerous provisions of existing law pertaining to the CalVCP, and made many technical and substantive changes, including the time requirements for approval or denial of an application.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
California Immigrant Policy Center

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: June 30, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 601 (Hancock) – As Amended April 20, 2015

SUMMARY: Requires the Secretary of the Department of Corrections and Rehabilitation develop a Corrections Accountability Report on January 10, March 15, and a fiscal year-end report, containing specified information regarding each institution, including, among other information, the total budget, including actual expenditures, staff vacancies and the number of authorized staff positions, overtime, sick leave, and the average length of lockdowns, and to post those reports on the department's Internet Web site, as provided. Specifically, **this bill**:

1) Provides that the Secretary of the Department of Corrections and Rehabilitation shall develop a Corrections Accountability Report for each institution on January 10, March 15, and a fiscal year-end report and post those reports on the department's website. The department shall post both current fiscal-year reports and reports for the immediately preceding three fiscal years for each institution. The department shall also post corrections made to inaccurate or incomplete data to current or previous reports.

2) Specifies that each report shall include the three-year statewide recidivism rate, a brief biography of the warden, including whether he or she is an acting or permanent warden, contact information for the warden, and a brief description of the prison, including the total number of inmates.

3) Specifies that each report shall be created using, when possible, information collected using the Compstat (computer assisted statistics) reports for each prison, or other verifiable information collected by the department, and shall include, but not be limited to, all of the following indicators:

   a) Total budget, including actual expenditures, staff vacancies, overtime, sick leave, and number of authorized staff positions;

   b) Rehabilitation programs, including capacity, enrollment, and diploma and GED completion rate;

   c) Average length of lockdowns;

   d) Number of deaths, specifying homicides, suicides, unexpected deaths, and expected deaths;

   e) Number of use of force incidents;

f) Number of inmate appeals, including the number being processed, overdue, and dismissed;

g) Number of inmates in administrative segregation; and

h) Total contraband seized, specifying the number of cellular telephones.

EXISTING LAW:

1) Creates in state government, the California Department of Corrections and Rehabilitation (CDCR), headed by a Secretary who is appointed by the Governor, subject to Senate confirmation, and serves at the pleasure of the Governor. CDCR consists of Adult Operations, Adult Programs, Juvenile Justice, the Corrections Standards Authority, the Board of Parole Hearings, the State Commission on Juvenile Justice, the Prison Industry Authority, and the Prison Industry Board. (Gov. Code, § 12838, subd. (a).) As explained in the Legislative Analyst's Office Analysis of the Governor's 2015-16 Proposed Budget: The CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of February 4, 2015, CDCR housed about 132,000 adult inmates in the state's prison system. Most of these inmates are housed in the state's 34 prisons and 43 conservation camps. About 15,000 inmates are housed in either in–state or out–of–state contracted prisons. The department also supervises and treats about 44,000 adult parolees and is responsible for the apprehension of those parolees who commit new offenses or parole violations. In addition, about 700 juvenile offenders are housed in facilities operated by CDCR's Division of Juvenile Justice, which includes three facilities and one conservation camp. The Governor's budget proposes total expenditures of $10.3 billion ($10 billion General Fund) for CDCR operations in 2015–16.

2) Provides that the Governor, upon recommendation of the Secretary, shall appoint the wardens of the various state prisons. Each warden shall be subject to removal by the secretary. If the Secretary removes him or her, the secretary's action shall be final. The warden shall be exempt from civil service. (Pen. Code, § 6050, subd. (a).)

3) Authorizes the Inspector General (IG) to conduct a management review audit of any warden in CDCR or superintendent in the Division of Juvenile Justice. The management review audit shall include, but not be limited to, issues relating to personnel, training, investigations, and financial matters. Each management review audit shall include an assessment of the maintenance of the facility managed by the warden or superintendent. The audit report shall be submitted to the Secretary of CDCR for evaluation and for any response deemed necessary. Any Member of the Legislature or the public may request and shall be provided with a copy of any audit by the Inspector General, including a management review audit or a special audit or review. A report that involves potential criminal investigations or prosecution or security practices and procedures shall be considered confidential, and its disclosure shall not be required under this section. (Pen. Code, § 6051.)

4) States that the IG shall audit each warden of an institution one year after his or her appointment, and shall audit each correctional institution at least once every four years. Each audit shall include, but not be limited to, issues relating to personnel, training, investigations, and financial matters. Each audit shall include an assessment of the maintenance of the

facility managed by the warden. The audit report shall include the IG's assessment of facility maintenance. These audit reports shall be provided to the Legislature and shall be made public. The requirements of this paragraph shall be phased in by the IG so that they are fully met by July 1, 2009. (Pen. Code, § 6126 subd. (a)(2).)

5) Specifies that the Secretary of the Department of Corrections and Rehabilitation is required to establish the Case Management Reentry Pilot Program for offenders under the jurisdiction of the department who have been sentenced to a term of imprisonment under Section 1170 and are likely to benefit from a case management reentry strategy designed to address homelessness, joblessness, mental disorders, and developmental disabilities among offenders transitioning from prison into the community, as specified. The department is required to submit a final report of the findings from its evaluation of the pilot program to the Legislature and the Governor no later than three years after the enactment of Assembly Bill 1457 or Senate Bill 851 of the 2013–14 Regular Session. (Pen. Code § 3016.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "SB 601 establishes a framework for providing better public access to key information about the performance of California's prison system by displaying a user friendly quarterly report on the CDCR webpage."

2) **Author's Background**: According to the background submitted by the author, "SB 601 intends to develop an accessible quarterly report that highlights management and performance of each state prison for legislative use. By requiring the Secretary of the CDCR to repackage the data to post online, the public and the Legislature could hold the department accountable for the overall management of the correctional facility, including administrative services, expenditures, safety and security, and program and support services."

3) **Comstat**: Comstat (short for "computer statistics") is an organizational management tool modeled after the Los Angeles and the New York Police Departments to monitor and reduce crimes and is easily accessible to the public. In 2006, the CDCR designed and implemented Compstat to monitor and provide operational review of prisons, parole, and CDCR as a whole. As part of Governor Schwarzenegger's government transparency efforts in 2009, the Compstat reports were moved from the CDCR's Web site and made available on the Reporting Transparency in Government's Web site; however, the Compstat reports and audits are hard for the public to find and view among the thicket of reports on that site. In addition, the Compstat audits and reports are non-descriptive and difficult to understand. This bill is intended to make Comstat information more readily accessible and easier to understand.

4) **Independent Review Panel Recommendations:** For the last several years the CDCR has been the subject of a great deal of scrutiny and criticism. In March of 2004 then-Governor Schwarzenegger announced the creation of an "Independent Review Panel" ("IRP") led by former Governor George Deukmejian to examine ways to improve adult and youth corrections in California. In June of 2004 the IRP released its report, urging in part the establishment of "a system of accountability that includes performance measures by which to

evaluate employees and monitor levels of achievement."[1] The IRP, which assessed a state correctional system prior to the reorganization approved in 2005,[2] stated in part:

> To a significant extent, the problems of California's Correctional system grow out of its structure. The Secretary of the Youth and Adult Correctional Agency, for example, has no control over line operations. Instead, the state's 32 prison wardens and eight juvenile institution superintendents each operate independently, with little consistency in procedures and minimal help from headquarters. Lines of responsibility are blurred by layers of bureaucracy between managers and functions. *Accountability is conspicuously absent, as is transparency for the public into the system's inner workings.* Clear, uniform policies governing the system's most vital functions — fiscal matters, personnel and training, internal affairs, information technology, and health care — are equally lacking. Boards, commissions, and other entities that have evolved over the decades perform duplicate and overlapping functions. And the system's organizational structure has not kept pace with the massive growth in inmate population or with the vast geographical spread of the institutions.
>
> The sheer size and complexity of the correctional system, the critical nature of its mission, and the severity of the problems dictate the need for wholesale reform, and that reform should begin with the system's organizational structure. The Corrections Independent Review Panel therefore proposes that the state's correctional agencies be reorganized according to the plan described in this chapter. *While the restructuring alone will not produce the necessary reforms, it will serve as the foundation for cleaning up the prison system, reining in costs, curbing misconduct, holding correctional administrators accountable for the system's performance, and making communities safer by doing more to ensure that inmates and youth wards leave custody better prepared to function in society.*[3]

The IRP, which recommended a restructuring that "'flattens' the organization by removing layers of bureaucracy that have obscured lines of authority and accountability between top managers and the functions for which they are responsible,"[4] identified the following management principles as key to reforming the state's correctional system, and in particular recommended:

> Transforming the culture of the Department of Corrections and the California Youth Authority into one in which personal integrity and loyalty to the department mission consistently take precedence over loyalty to co-workers suspected of wrongdoing, requires a vigorous, multi-pronged approach. The effort should be guided by quality management principles incorporating clear objectives and purpose; key performance measures; consistent monitoring; and a

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[1] *Report of the Independent Corrections Review Panel* (June 2004), p. 26. The report is available online at http://cpr.ca.gov/Review_Panel/.
[2] The reorganization of the corrections agency was codified in SB 737 (Romero), Ch. 10 Stats. 2005.
[3] *Id,* p. 1 (emphasis added).
[4] *Id.* p. 4.

system of correction and reward. Quality management principles accomplish the following:

- Provide clarity of purpose in each employee's job;
- Link each person's work to the department's mission;
- Foster continual improvement;
- *Bring accountability to all department levels.*[5]

With respect to management staff, the IRP stated the department "must provide supervisors, managers, and executive management every possible opportunity to succeed.

> These individuals must be given a clear understanding of the responsibilities of their positions. They must also receive performance evaluations to ensure that they grow in their positions and know how to improve their performance. To accomplish that purpose, the Department of Correctional Services should take the following actions:
>
> - Develop specific job objectives in the job description for all managers, and executives, and rate job performance by these objectives at least annually. The specific job objectives and method of rating job performance must be standardized to ensure consistency. . . .
> These basic management steps must be incorporated into the performance evaluations of each manager and evaluated at least annually. Clear standards lead to better accountability of employee actions and help identify employees who need further training or mentorship. . . .[6]

Specifically with respect to wardens, the report states:

> To provide a model for exceptional performance by wardens Secretary Lehman of the Washington State Department of Corrections noted:
>
> > There are five questions to ask top performing wardens to find out how effectively they deal with an issue: (1) What alternatives or options were considered? (2) What were the expected results? (3) What data was tracked? (4) What barriers were encountered? (5) What actions were taken to improve the problem?[7]

Following the IRP report, in 2005 Governor Schwarzenegger proposed to reorganize what then was the "Youth and Adult Correctional Agency." Accountability was a key goal of the proposed reorganization:

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[5] *Id.*, p. 20-21 (emphasis added).
[6] *Id.*, p. 75.
[7] *Id.* p. 94.

> Restructuring will establish clear lines of reporting, accountability and responsibility and performance assessment that will improve services, reduce the likelihood of repeat offenses and eliminate abuses within the current system. It will centralize services and activities to remove duplication and leverage the scale of the Department's $6 billion spending authority, thus reducing the cost of operations. The reorganization will deliver a safer society at less cost to the people of California.[8]

In its report assessing the Governor's proposed reorganization, the Little Hoover Commission stated in part:

> The plan clarifies and strengthens the chain of command from the secretary to the prison wardens and Youth Authority superintendents, who under the current system operate with little accountability to the secretary or loyalty to the organization. Wardens and superintendents will report to the secretary through a division director and chief deputy secretary and will not require Senate confirmation. *The proposed reorganization would give the secretary necessary authority over all activities in the agency and its subordinate departments, thereby increasing the ability of the Governor, lawmakers and the public to hold the secretary accountable for the performance of correctional programs.*
>
> . . . The lack of a unified structure for prison work and education programs has diminished their effectiveness. *The longstanding practice of allowing prisons to operate independently has hindered accountability and hampered the standardization of policies, contributing to inmate abuse and expensive lawsuits.*[9]

With respect to wardens prior to the 2005 reorganization, the Little Hoover Commission noted:

> Under the current system, the Secretary reports to the Governor, but he does not have the actual power to change the operations of the Department of Corrections and the California Youth Authority that administer the correctional institutions. As a result, the Governor cannot truly hold the Secretary accountable for the performance of the correctional system or enact major reforms in the way prisons are administered. Nor can the Secretary dismiss a warden of an institution. *Currently the system's 32 wardens and eight superintendents do not report directly into the Secretary. Each warden employs different standards and different operating procedures. This decentralized framework, along with Senate confirmation of wardens, has helped create a system of operational silos with little accountability or sharing of best practices outside the facility walls.*[10]

5) **SB 601 (2011) Hancock:** Senator Hancock sponsored SB 601 in 2011 which required the Secretary of the Department of Corrections and Rehabilitation to develop a Corrections Accountability Report on January 10, March 15, and a fiscal year-end report, containing specified information regarding each institution, including, among other information, the

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[8] Governor's Reorganization Plan, Reforming California's Youth & Adult Correctional Agency (Appendix "A," *Reconstructing Government: A Review of the Governor's Reorganization Plan: Reforming California's Youth and Adult Correctional Agency*, Little Hoover Commission (Feb. 2005).
[9] *Id* (emphasis added).
[10] *Id.* (emphasis added).

total budget, including actual expenditures, staff vacancies and the number of authorized staff positions, overtime, sick leave, and the average length of lockdowns, and to post those reports on the department's Internet website. The bill was vetoed by Governor Brown with the following veto message:

" This measure would require the Department of Corrections and Rehabilitation to post on its website prescribed information and reports and to update them every four months.

"This measure is unnecessary and redundant; existing law already requires the Department to provide this information. I am happy to work with the author on ways the Department could better organize its website, but I don't think this takes a law."

6) **Argument in Support**: According to *Legal Services for Prisoners with Children*, "SB 601's 'data dashboard' would provide a much more accurate picture of CDCR policy and procedure to lawmakers. Further, by requiring the CDCR to publish the 'data dashboard' on their website on a quarterly basis, SB 601 involves the general public and establishes a more meaningful system of accountability within California's correctional system. By increasing the ability of the public, lawmakers, and the Governor to each hold the CDCR accountable for the performance of correctional programs, SB 601's 'data dashboard' will ultimately allow for more responsible policy and more effective reform to follow."

7) **Prior Legislation**: SB 601 (Hancock) of the 2011-2012 Legislative Session, required the Secretary of the Department of Corrections and Rehabilitation to develop a Corrections Accountability Report on January 10, March 15, and a fiscal year-end report, containing specified information regarding each institution, including, among other information, the total budget, including actual expenditures, staff vacancies and the number of authorized staff positions, overtime, sick leave, and the average length of lockdowns, and to post those reports on the department's Internet website. SB 601 was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

Legal Services for Prisoners with Children

Opposition

None

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: June 30, 2015
Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 621 (Hertzberg) – As Introduced February 27, 2015

SUMMARY: Authorizes the funds from Mentally Ill Offender Crime Reduction Program to be used for diversion programs that offer appropriate mental health and treatment services.

EXISTING LAW:

1) Establishes the Board of State and Community Corrections (BSCC) commencing July 1, 2012. (Pen. Code, § 6024, subd. (a).)

2) States that the mission of the BSCC includes providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Pen. Code, § 6024, subd. (b).)

3) Requires the BSCC to administer mentally ill offender crime reduction grants on a competitive basis to counties that expand or establish a continuum of timely and effective responses to reduce crime and criminal justice costs related to mentally ill offenders. (Pen. Code, § 6045, subd. (a).)

4) Specifies that the grants must be divided equally between adult and juvenile mentally ill offender crime reduction grants, and requires the grants to support prevention, intervention, supervision, and incarceration-based services and strategies to reduce recidivism and to improve outcomes for mentally ill juvenile and adult offenders. (Pen. Code, § 6045, subd. (a).)

5) Defines "mentally ill offenders" for purposes of the grant program as seriously emotionally disturbed children or adolescents; adults who have a serious mental disorder; and, adults who require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention because of a mental disorder with symptoms of psychosis, suicidality, or violence. (Pen. Code, § 6045, subd. (b).)

6) Requires the BSCC to establish minimum requirements, funding criteria, and procedures for awarding grants. (Pen. Code, § 6045.6.)

7) Provides that an "application submitted by a county shall describe a four-year plan for the programs, services, or strategies to be provided under the grant. The board shall award grants that provide funding for three years. Funding shall be used to supplement, rather than supplant, funding for existing programs. Funds may be used to fund specialized alternative custody programs that offer appropriate mental health treatment and services." (Pen. Code, § 6045.4, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The Mentally Ill Offender Crime Reduction Grant Program supports the implementation and evaluation of locally developed demonstration projects designed to reduce recidivism among persons with mental illness.

   "The MIOCR Grant Program recognizes the cooperation between law enforcement, corrections, mental health, and other agencies is critical to improve California's response to mentally ill offenders. Projects are to be collaborative and address locally identified gaps in jail and community-based services for persons with a serious mental illness.

   "In an effort to reinvest in treatment and prevention at the local level, SB 621 promotes cost-effective approaches to meet the long-term needs of adults and juveniles with mental disorders who are offenders. This bill will clarify that counties should receive the resources they need to divert mentally ill low-level offenders to treatment rather than jail, with follow-up services for those released from jail to keep them from reoffending."

2) **Mentally Ill Offender Crime Reduction Program**: In 1998, the Legislature passed SB 1485 (Rosenthal) establishing the Mentally Ill Offender Crime Reduction Program. Under SB 1485, the Board of Corrections (which was replaced by the BSCC) awarded grants to support the development, implementation, and evaluation of projects that demonstrated locally-identified strategies for reducing recidivism among mentally-ill offenders. Before the program was defunded in 2008, grant-funded projects delivered targeted, enhanced services and/or interventions while fostering interagency collaboration between mental health and criminal justice agencies. The program encompassed 30 projects in 26 counties. While the 30 projects were unique in that each was designed to deal with the specific service gaps and needs of its jurisdiction, all used their grants to maximize local resources, incorporate evidence-based best practices, and design service-delivery systems that would enhance local capabilities. (California Board of Corrections, *Mentally Ill Offender Crime Reduction Grant Program: Overview of Statewide Evaluation Findings* (Mar. 2005) <http://www.bdcorr.ca.gov/cppd/miocrg/reports/miocrg_report_presentation.pdf>.)

   An evaluation of the Mentally Ill Offender Crime Reduction Program in 2005 indicated generally favorable outcomes. The Board's analysis of the local research findings confirmed that the enhanced treatment and support services offered through the program made a positive difference. The statewide research showed that program participants, compared to those receiving treatment as usual, were: "1) more comprehensively diagnosed and evaluated regarding their mental functioning and therapeutic needs; 2) more quickly and reliably provided with services designed to ameliorate the effects of mental illness; 3) provided with more complete after-jail systems of care designed to ensure adequate treatment and support;

and, 4) monitored more closely to ensure that additional illegal behavior, mental deterioration, and other areas of concern were quickly addressed." (*Ibid.*) As a result, program "participants were booked less often, convicted less often, and convicted of less serious offenses when they were convicted than individuals receiving [treatment as usual (TAU)]. In addition, fewer participants served time in jail and, when they did serve time, they were in jail for fewer days than were TAU participants." (*Ibid.*)

Last year, SB 1054 (Steinberg) – Chapter 436, Statutes of 2014, reestablished the Mentally Ill Offender Crime Reduction Program with some differences from its previous incarnation. Most importantly for purposes of this bill, SB 1054 allows grants to be awarded to specialized alternative custody programs that offer appropriate mental health treatment and services. Previous legislation prevented the use of grants towards programs providing an alternative to incarceration. This bill explicitly includes diversion programs offering mental health treatment and services among the programs eligible for funding under the program.

3) **BSCC Background**: "Chapter 36, Statutes of 2011 (SB 92, Committee on Budget and Fiscal Review), established the BSCC, effective July 1, 2012. From 2005 through 2012, the BSCC was the Correction Standards Authority, a division of CDCR. Prior to that it was the Board of Corrections, an independent state department. The BSCC is responsible for administering various criminal justice grant programs and ensuring compliance with state and federal standards in the operation of local correctional facilities. It is also responsible for providing technical assistance to local authorities and collecting data related to the outcomes of criminal justice policies and practices." (LAO, The 2013-14 Budget: The Governor's Criminal Justice Proposals, p. 44 (Feb. 15, 2013).)

4) **Pretrial Diversion Programs**: Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however a hearing to terminate diversion is required.

5) **Argument in Support**: According to the *Los Angeles District Attorney*, the sponsor of this bill, "[A]t the moment, the sheriff is housing more than 300 inmates who are considered to have severe to acute mental illnesses, even though they only have dedicated bed space for 40 severe/acute mentally ill inmates.

"In an attempt to address this situation, District Attorney Lacey has embarked on an effort to create the largest mental health criminal diversion program in the nations…."

"One of the major obstacles to implementing the District Attorney's comprehensive mental health diversion program is funding. Our office believes that specifically authorizing the BSCC to award MIOCR grants to counties for mental health diversion programs will assist our efforts to establish the largest mental health diversion program in the nation."

6) **Prior Legislation**:

a) SB 1054 (Steinberg), Chapter 436, Statutes of 2014, provides grants to counties to develop and implement a comprehensive, cost-effective strategy to reduce the rate of recidivism and re-incarceration of mentally ill offenders.

b) SB 92 (Budget and Fiscal Review Committee), Chapter 36, Statutes of 2011, starting July 1, 2012, eliminated the Corrections Standards Authority, and assigned its former duties to the newly-created 12-member BSCC and assigns additional duties, as provided.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles District Attorney (Sponsor)
Alameda County Board of Supervisors
American Civil Liberties Union
American Association for Marriage and Family Therapy, California Division
California Attorneys for Criminal Justice
California Catholic Conference of Bishops
California Council of Community Mental Health Agencies
California District Attorneys Association
California Medical Association
California Probation, Parole, and Correctional Association
California Professional Firefighters
California Public Defenders Association
California State Association of Counties
Chief Probation Officers of California
Contra Costa County Board of Supervisors
County Welfare Directors Association of California
Crime Victims Action Alliance
Disability Rights California
Fraternal Order of Police, California State Lodge
Legal Services for Prisoners with Children
Long Beach Police Officers Association
Los Angeles County Board of Supervisors
Los Angeles County Professional Peace Officers Association
Marin County Board of Supervisors
Mental Health America of California
National Alliance on Mental Illness
Sacramento County Deputy Sheriffs' Association
Santa Ana Police Officers Association

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: June 30, 2015
Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 676 (Cannella) – As Amended May 5, 2015
As Proposed to be Amended in Committee

SUMMARY: Creates a process for pre-conviction forfeiture and destruction of images which are the subject of disorderly conduct cases, and allows computers and electronic devices used in the commission of those crimes to be subject to forfeiture after a conviction is obtained. Specifically, **this bill**:

1) States that matter obtained or distributed in violation of specified disorderly conduct offenses, including "revenge porn," and which is in the possession of a government official or agency is subject to forfeiture.

2) Allows the Attorney General, district attorney, county counsel, or city attorney to initiate a forfeiture petition filed in the superior court in the county in which the matter is located.

3) Requires the prosecutor to service notice of the petition upon all individual who have an interest in the property.

4) Allows a person claiming interest in the property to file a verified claim stating an interest in the property.

5) States that the burden of proof is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture under this section.

6) Provides that a criminal conviction is not necessary prior to the entry of an order for the destruction of matter under this section.

7) States that the destruction of the property may be carried out by a police or sheriff's department or the California Department of Justice, but that the court must specify which agency is responsible for the destruction.

8) Defines "matter" for purposes of these forfeiture proceedings as "any picture, photograph, image, motion picture, video tape, film, film strip, negative, slide, photocopy, or other pictorial representation, recording, or electrical reproduction." "Matter" also means any data storage media that contains the image at issue, but does not include the computer, camera, telecommunication or electronic device, unless the matter consists solely of electronic information stored on a device that cannot be altered or erased.

9) Authorizes the court to require the petitioner to demonstrate that the petition covers no more property than necessary to remove possession of the offending matter.

10) States that it is a defense to a forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

11) Adds disorderly conduct offenses to the list of offenses for which a computer may be subject to forfeiture upon a criminal conviction.

EXISTING LAW:

1) Authorizes pre-conviction forfeiture and destruction of matter that depicts persons under the age of 18 years personally engaging in or simulating sexual conduct when that matter is in the possession of a government entity. (Pen. Code, § 312.3.)

2) Defines "matter" as "any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials." It also means "any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip." (Pen. Code, § 312.3, subd. (h).)

3) Authorizes post-conviction forfeiture of computers and telecommunications equipment used to commit specified computer crimes, including child pornography. (Pen. Code, § 502.01.)

4) Requires the prosecution to prove by a preponderance of the evidence that the computer was used in the commission of the crime. (Pen. Code, § 502.01, subd. (b).)

5) Prohibits the return of seized property to an individual with a valid interest in the property if that person knew or should have known that the property was used in the commission of specified offenses relating to obscene matter or child pornography, and all of the offenses for which forfeiture may be ordered. (Pen. Code, § 502.01, subd. (c)(3).)

6) Provides that if a minor uses a computer or telecommunication device owned by parents or guardians to commit a computer crime for which forfeiture is allowed, the parent or guardian can prevent forfeiture by affirming that the minor shall not have access to any such equipment for two years. (Pen. Code, § 502.01, subd. (e)(3).)

7) Gives the court discretion to deny forfeiture when the court finds that the perpetrator is not likely to use the property otherwise subject to forfeiture to commit future illegal acts. (Pen. Code, § 502.01, subd. (f).)

8) Provides that any person who intentionally distributes the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in a sexual act, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress, is guilty of a misdemeanor. (Pen. Code, § 647, subd. (j)(4)(A).)

9) Makes it a misdemeanor for any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. (Pen. Code, § 647, subd. (j)(1).)

10) Makes it a misdemeanor for any person to use a device to secretly videotape or record by electronic means another identifiable person under or through his or her clothing, for the purpose of viewing that person's body or undergarments without consent and under circumstances in which that person has a reasonable expectation of privacy, if the perpetrator commits the act with a prurient intent. (Pen. Code, § 647, subd. (j)(2).)

11) Makes it a misdemeanor for any person who uses a concealed instrumentality to secretly videotape or record another person who is in a state of full or partial undress, for the purpose of viewing that person's body or undergarments without consent while that person is in a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that individual. (Pen. Code, § 647, subd. (j)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Assuming they were not stolen, cyber exploitation images can remain the property of the distributing offender even after conviction. Without the ability to seek forfeiture and destruction of cyber exploitation images, it is difficult to remove the images from the Internet when they are reposted, even following a successful prosecution of the original poster. Similar to existing child pornography statute, this bill would state that upon conviction those images are subject to forfeiture to law enforcement for destruction. It would also allow a prosecuting agency to file a petition for forfeiture of matter already found to be cyber exploitation images that have been reposted by others."

2) **Current Forfeiture Provisions for Computer Crimes**: Asset forfeiture is the process by which the government confiscates money and/or property that may represent proceeds of a crime or property used or involved in the commission of a crime. The role of asset forfeiture is to remove the tools of the trade from a criminal, to deprive the wrongdoer of the proceeds of the crime, and to recover property that may be used to compensate victims.

   Property that the wrongdoer would not have had but for the crime can be forfeited as proceeds. For example, cash acquired through an unlawful activity such as drug dealing can be forfeited under the proceeds theory. Property used to commit the crime is called facilitating property. For example, a house where drugs are manufactured can be forfeited under the facilitating theory.

   California law authorizes the forfeiture of computer equipment and related software when a defendant is convicted of specified computer crimes, including computer access crimes,

identity theft, forgeries and frauds, possession and distribution of child pornography, criminal threats, and stalking. (Pen. Code, § 502.01, subd. (a)(1).) This law is meant to take away the tools of the trade. The property that is forfeitable is limited to specified telecommunications equipment, a computer, computer system, network, software, or data residing on it. (Pen. Code, § 502.01, subd. (a)(1).)

A criminal conviction is required, and the prosecutor must establish that the property is subject to forfeiture by a preponderance of the evidence. (Pen. Code, § 502.01, subd. (b).) After the prosecution files a petition for forfeiture, the sentencing court sets a hearing date to determine whether the computer equipment is forfeitable. (*Ibid.*) The computer-forfeiture law includes a procedure by which an innocent person claiming an interest in the equipment can retrieve the property or receive compensation equivalent to the security interest. (Pen. Code, § 502.01, subds. (c) & (d).) If the court determines the defendant's property is forfeitable, then the victim may receive the property as full or part restitution, if the victim so chooses. Alternatively, the court may distribute the property to the prosecuting agency or another public agency or non-profit organization. (Pen. Code, § 502.01, subd. (g).)

This bill authorizes computer forfeiture upon conviction of specified disorderly conduct offenses, including revenge porn and making a concealed recording of a person in a state of undress or in his or her undergarments in an area where that person has a reasonable expectation of privacy under the theory that the electronic equipment is property which facilitated the commission of the crime.

It should be noted, however, that in contrast to the forfeiture of money, a house, or a car, arguably computer forfeiture is not a deterrent for future crime, because many defendants can easily obtain another electronic device.

3) **Confiscation of Images Before Conviction**: As with child pornography cases, this bill provides a mechanism whereby a government agency can petition the court for the forfeiture of the offending image and its destruction before the defendant has been convicted. The rationale is to prevent the defendant from further distributing the image at issue.

   As proposed to be amended, the matter that can be forfeited and destroyed includes "any picture, photograph, image, motion picture, video tape, film, film strip, negative, slide, photocopy, or other pictorial representation, recording, or electrical reproduction." It also includes "any data storage media that contains the image at issue, but does not include the computer, camera, telecommunication or electronic device, unless the matter consists solely of electronic information stored on a device that cannot be altered or erased." Additionally, before granting an order for destruction, the court may require the petitioner to establish that the petition covers no more property than necessary to remove possession of the offending matter. This language seeks to ensure that, whenever possible, the defendant's electronic devices are not forfeited before conviction in an effort to delete the images in question.

4) **"Cyber Revenge" or "Revenge Porn"**: "Revenge porn" has received national attention in recent years, with legislation being proposed throughout the various states to address this unfortunate phenomenon. The National Conference of State Legislatures (NCSL), describes "revenge porn" as "the posting of nude or sexually explicit photographs or videos of people online without their consent, even if the photograph itself was taken with consent. A spurned spouse, girlfriend or boyfriend may get revenge by uploading photographs to websites, many

of which are set up specifically for these kinds of photos or videos. The victim's name, address and links to social media profiles are often included with the images, and some websites charge a fee to have the materials removed." (See NCSL, State "Revenge Porn" Legislation <http://www.ncsl.org/research/telecommunications-and-information-technology/state-revenge-porn-legislation.aspx>.)

The California Department of Justice recently prosecuted two cases involving this conduct. In February 2015, Kevin Bollaert, who ran the website ugotposted.com, was convicted of 6 counts of extortion and 21 counts of identity theft for posting sexually-explicit photos online and demanding money from victims to remove the images. A court sentenced him to 18 years in prison. The case was the first criminal prosecution of a cyber-exploitation website operator in the country. (See Department of Justice April 3, 2015 press release, <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-18-year-prison-sentence-cyber.) In May 2015, Casey Meyering, who ran the revenge-porn site winbystate.com, pled no contest to extortion, attempted extortion, and conspiracy. He received a three-year sentence. (See Department of Justice June 8, 2015 press release, <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-three-year-sentence-cyber>.)

Notably, the Department of Justice did not use the new "revenge porn" statute, which does not apply to Website operators; but rather opted to prosecute using existing felony crimes. A spokesperson for Attorney General Harris who was quoted in Time Magazine, said this approach "one about landing 'a big fish, not all the little fish.' when it comes to revenge porn." (<http://nation.time.com/2013/12/10/a-new-strategy-for-prosecuting-revenge-porn/>.) It is unclear whether individuals who anonymously upload photos will also face prosecutions for disorderly conduct.

5) **Obtaining Sexual Images Through Illegal Computer Hacking**: "Revenge porn" can also refer to the actions of a person who hacks into a personal computer and then distributes or posts on the Internet the photographs or videos.

   There have been instances of stolen images of celebrities being distributed through the Internet. Notable recent incidents involved actors Jennifer Lawrence, Kristen Dunst, and Kate Upton. Technology experts speculate that the hacker may have exploited a flaw in Apple's Find My iPhone service to access the celebrities' iCloud storage. (<http://www.cnn.com/2014/09/02/showbiz/hacked-nude-photos-five-things/>.) While this conduct could not be prosecuted as extortion, it can be prosecuted as illegal access to take or use data under Penal Code section 502, subdivision (c).

   The provisions of this bill apply only to violations of Penal Code section 647, subdivision (j), disorderly conduct, and so would not apply to the situation described above. However, as a violation of unauthorized access to computer data (Pen. Code, 502, subd. (c)), current computer forfeiture provisions apply to this conduct. (See Pen. Code, §§ 502, subd. (g) & 502.01, subd. (a)(1).)

6) **Other Practical Considerations**: It should be noted that the offending images might also be found on the computers and servers of a third party, such as in Internet service provider or a Website such as Facebook. In some cases Internet service providers and others who receive such images will voluntarily remove and/or destroy them. For example, Facebook's policy

regarding Community Sexual Violence and Exploitation states, "To protect victims and survivors, we also remove photographs or videos depicting incidents of sexual violence and images shared in revenge or without permissions from the people in the images." (<https://www.facebook.com/communitystandards#>.) But there may be situations in which a court order is required for removal of the images. There is currently no provision that would permit a court to order the removal of non-consensual intimate images from the Internet.

7) **Argument in Support**: According to the *California Department of Justice*, the sponsor of this bill, "Cyber exploitation is not currently included in the list of computer crimes subject to forfeiture, and there is currently no effective mechanism for removing images that have been found to be in violation of cyber exploitation laws short of obtaining an entirely new criminal conviction for each additional distributor.

"SB 676 addresses this problem by first adding cyber exploitation to the list of computer crimes eligible for forfeiture following a conviction. Second, the bill provides law enforcement with a process for seeking a court order to remove and destroy reposted cyber exploitation images. This procedure, which is currently available for images depicting minors engaged in sexual activity, includes a number of due process safeguards: a prosecuting agency must first provide the individual hosting the images with thirty days notice, during which time the agency's right to seek forfeiture may be contested in superior court. In cases where the distributor does file a claim of legitimate interest in hosting the images, the burden is on the prosecuting agency to prove that the images fall within Section 647's definition of cyber exploitation. When the agency prevails or if the distributor does not challenge the petition, an order for destruction of the image may then be issued by the court and the destruction may be carried out by local law enforcement or the state Department of Justice."

8) **Related Legislation**:

a) AB 32 (Waldron) tolls the statute of limitations for illegally acquiring digital images of a person that display an intimate body part of a person. AB 32 is pending hearing in the Senate Public Safety Committee.

b) AB 1310 (Gatto) expands the jurisdiction of a criminal action for specified conduct, including "revenge porn" to include the county in which the offense occurred, the county in which the victim resided at the time the offense was committed, or the county in which the intimate image was used for an illegal purpose. AB 1310 is pending hearing in the Senate Public Safety Committee.

9) **Prior Legislation**:

a) SB 1255 (Canella), Chapter 863, Statutes of 2014, expanded the offense of revenge porn to include to include what is commonly known as a "selfie," an image someone takes of himself or herself.

b) AB 2643 (Wieckowski), Chapter 859, Statutes of 2014, created a private right of action against a person who intentionally or recklessly distributes a sexually explicit photograph

or other image or recording of another person without the consent of that person.

c) SB 255 (Canella), Chapter 466, Statutes of 2013, created a new misdemeanor for the distribution of an image of an identifiable person's intimate body parts which had been taken with an understanding that the image would remain private, commonly referred to as "revenge porn."

d) AB 1499 (Liu), Chapter 751, Statutes of 2004, added child pornography offenses to the list of offenses for which a computer may be subject to forfeiture.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice (Sponsor)
Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
California District Attorneys Association
California Police Chiefs Association
California State Lodge, Fraternal Order of Police
California State Sheriffs' Association
Crime Victims United of California
Long Beach Police Officers Association
Los Angeles Police Protective League
Los Angeles County Profession Peace Officers Association
Riverside Sheriffs Association
Sacramento County Deputy Sheriffs' Association
Santa Ana Police Officers Association

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 SB-676 (Cannella (S))

*********Amendments are in BOLD*********

Mock-up based on Version Number 97 - Amended Senate 5/5/15
Submitted by: Sandy Uribe, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. ~~Section 312.3 of the Penal Code is amended to read:~~

~~**312.3.** (a) Matter that depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct as defined in Section 311.4, or that is obtained or distributed in violation of subdivision (j) of Section 647 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.~~

~~(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.~~

~~(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.~~

~~(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.~~

~~(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).~~

~~(e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.~~

~~(f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.~~

~~(g) A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.~~

~~(h) As used in this section, "matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip.~~

~~(i) This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.~~

~~(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.~~

Section 647.8 of the Penal Code is enacted to read:

647.8 (a) Matter that is obtained or distributed in violation of subdivision (j) of Section 647 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.

(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating

the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.

(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.

(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

(e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.

(f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.

(g) A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.

(h) As used in this section, "matter" means any picture, photograph, image, motion picture, video tape, film, film strip, negative, slide, photocopy, or other pictorial representation, recording, or electrical reproduction. "Matter" also means any data storage media that contains the image at issue, but does not include the computer, camera, telecommunication or electronic device, unless the matter consists solely of electronic information stored on a device that cannot be altered or erased.

(i) Prior for granting an order for destruction of matter pursuant to this section, the court may require the petitioner to demonstrate that the petition covers no more property than necessary to remove possession of the offending matter.

(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed

in aid of legitimate scientific or educational purposes.

SEC. 2. Section 502.01 of the Penal Code is amended to read:

502.01. (a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) "Sentencing court" means the court sentencing a person found guilty of violating or conspiring to commit a violation of subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) "Interest" means any property interest in the property subject to forfeiture.

(4) "Security interest" means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) "Value" has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the "value" of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "value" of those components of computer software packages shall be

equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) (1) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

(2) A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and shall send a copy of the motion to the prosecuting agency and to the probation department.

(3) If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

(1) The court shall determine the value of the property.

(2) The court shall determine the value of each valid interest in the property.

(3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, or subdivision (j) of Section 647, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

(g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(h) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (g).

Date of Hearing: June 30, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 716 (Lara) – As Amended May 5, 2015

SUMMARY: States that it is misdemeanor for any person who houses, possesses, or is in direct contact with an elephant to use specified devices designed to inflict pain for the purpose of training or controlling the behavior of an elephant. Specifically, **this bill**:

1) Specifies that on or after January 1, 2018, it shall be a misdemeanor for any person who houses, possesses, or is in direct contact with an elephant to use a bullhook, ankus, baseball bat, axe handle, pitchfork, or similar device designed to inflict pain for the purpose of training or controlling the behavior of an elephant.

2) Prohibited behavior includes brandishing, exhibiting, or displaying any of the devices, listed above, in the presence of an elephant.

EXISTING LAW:

1) Specifies that it is a misdemeanor for any owner or manager of an elephant to engage in abusive behavior toward the elephant, including the discipline of the elephant by any of the following methods:

   a) Deprivation of food, water, or rest. (Pen. Code, § 596.5, subd. (a).)

   b) Use of electricity. (Pen. Code, § 596.5, subd. (b).)

   c) Physical punishment resulting in damage, scarring, or breakage of skin. (Pen. Code, § 596.5, subd. (c).)

   d) Insertion of any instrument into any bodily orifice. (Pen. Code, § 596.5, subd. (d).)

   e) Use of martingales. (Pen. Code, § 596.5, subd. (e).)

   f) Use of block and tackle. (Pen. Code, § 596.5, subd. (f).)

2) Specifies the actions of a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal as a criminal offense. (Pen. Code, § 597.)

3) Specifies when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance,

drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor as a criminal offense. (Pen. Code, § 597, subd. (b).)

4) Requires punishment as a felony by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than twenty thousand dollars ($20,000), or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both that fine and imprisonment for violations of Penal Code section 597(animal cruelty). (Pen. Code, § 597, subd. (d).)

5) Requires that if a defendant is granted probation for a conviction animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 716 simply codifies industry standards for elephant management by prohibiting the use of bullhooks, bats, and pitchforks to discipline an elephant. A bullhook is typically embedded into most sensitive areas of an elephant, which involves areas around the ears, mouth, and back of the legs. The use of this instrument also puts handlers at severe risk, should an elephant decide to rebel against the trainer. Since 1990, there have been at least 16 human deaths, and 135 injuries in the U.S. have been attributed to elephants, primarily in circus-related incidents. Simply put, it is time for the State to prohibit this inhumane practice."

2) **Federal Protection Afforded to Elephants under the Animal Welfare Act**: Under the Animal Welfare Act (AWA), zoos, circuses, transporters, roadside menageries and exhibitors of elephants must be licensed and participate in record-keeping and marking requirements. Additional protections exist governing their care, handling, and transport. The AWA gives power to the Secretary of Agriculture and the United States Department of Agriculture, whose power is further delegated to the Animal Plant and Health Inspection Service (APHIS) to administer and enforce the AWA's requirements. APHIS enforces the Act through conducting inspections and instituting rules and regulations for facilities. APHIS is required to conduct yearly inspections and investigate facilities whenever a complaint is filed.

   The AWA does not prohibit any particular instruments in the handling of elephants or other

warm blooded animals.

3) **Guide, Bullhook, and Ankus are Terms which Refer to the Same Tool:** The guide is a shaft with a tapered metal hook attached, and it sometimes has a blunt metal point at the end. It is also sometime referred to as the ankus, (bull)hook, or goad. The guide extends a handler's reach so s/he may touch, push, or pull various parts of the elephant's body. A guide is used in all free contact programs in the United States, and may also be used in conjunction with protected contact. *Literature Review on the Welfare Implications of Elephant Training*, (April 2008) www.avma.org/KB/Resources/LiteratureReviews/Documents/elephant_training_bgnd.pdf

4) **American Veterinary Medicine Association (AVMA) Policy Does Not Prohibit the Use of Guides/Bullhooks:** AVMA policy prohibits the use of guides in a manner which inflicts harm on an elephant, but allows use of the guide as a husbandry tool for elephant management.

"The AVMA condemns the use of guides to puncture, lacerate, strike or inflict harm upon an elephant. Elephant guides are husbandry tools that consist of a shaft capped by one straight and one curved end. The ends are blunt and tapered, and are used to touch parts of the elephant's body as a cue to elicit specific actions or behaviors, with the handler exerting very little pressure. The ends should contact, but should not tear or penetrate the skin." (*Elephant Guides and Tethers*, AVMA.) www.avma.org/KB/Policies/Pages/Elephant-Guides-and-Tethers.aspx

"The AVMA recommend tethers only be used for the shortest time required for specific management purposes. Tethers provide a means to temporarily limit an elephant's movement for elephant or human safety and well-being. Tethers can be constructed of rope, chain, or nylon webbing, and their use and fit should not result in discomfort or skin injury. Forelimb tethers should be loose on the foot below the carpal joint, and hind limb tethers should fit snugly on the limb between the tarsus and knee joints. Tether length should be sufficient to allow the elephant to easily lie down and rise unless required for medical procedures for a limited period.. The AVMA also recognizes that shorter or otherwise modified tethers may need to be applied for limited period of time to perform medical procedures safely.

"Guides and tethers are used for training elephants in some elephant management systems, and appropriate training is important for facilitating veterinary care. However, guides and tethers should only be used in a manner consistent with the promotion of optimum welfare of the elephant. Personnel using these devices should be trained adequately, as well as introduced to alternative management systems." (*Elephant Guides and Tethers*, AVMA.) www.avma.org/KB/Policies/Pages/Elephant-Guides-and-Tethers.aspx

5) **Under Existing Law, it is a Crime to Engage in Abusive Behavior Towards an Elephant:** "It shall be a misdemeanor for any owner or manager of an elephant to engage in abusive behavior toward the elephant, . . ." (Pen. Code, § 596.5, subd. (a).) The statute goes on to list specific conduct which is included under "abusive behavior," but does not limit the definition of abusive behavior towards and elephant in any way. A "bull hook" or "guide" used by an owner or manager to engage in abusive behavior toward the elephant is already a crime under existing law.

6) **Criminalizing the Use of the "Bullhook" or "Guide" Will Eliminate Elephants in Live Performances:** There are two models for elephant trainers and caretakers to interact with elephants: "protective contact" and "free contact." In the protective contact model, the trainer or caretaker only interacts with elephants through a barrier or fence. In free contact the trainer/caretaker shares a physical space with the elephant. The bullhook/guide is necessary for free contact training or management. Without use of the "bull hook" or "guide," free contact is not a viable model for interacting with elephants. In order to have a live performance involving an elephant, free contact is necessary. Live performance with elephants typically occurs in a circus, but can also include use of elephants in films, or events like county fairs. If the use of the bullhook is prohibited, participation of elephants in those events will not be possible.

7) **Argument in Support**: According to *The Humane Society*, "The bullhook is the most commonly used device to train, punish, and control elephants. A bullhook is approximately 2 to 3 feet long and resembles a fireplace poker. It has a sharp metal hook and spike at one end and the handle is typically plastic or wood. Bullhooks are used to poke, prod, strike, and hit elephants on their sensitive skin in order to "train" them. Often the elephants are hit behind the ears and eyes which are paper thin and around their feet, mouth and trunk which are rich in nerve endings.

"Elephants are often hooked and hit with bullhooks before performances in order to instill fear and, in turn, ensure that tricks or other desired behavior will be performed on command, during training to teach and reinforce tricks, to punish the animals when they fail to perform as instructed, and to control elephants during routine handling. The handle is used as a club, inflicting substantial pain by striking areas where little tissue separates skin and bone. In response to criticisms that bullhook use constitutes abuse, the industry has publicly started calling it a "guide." Just brandishing the bullhook provides a constant reminder to elephants of the painful punishment that can be meted out against them at the whim of their handlers.

"California zoos accredited by the Association of Zoos and Aquariums (AZA) no longer use bullhooks, nor does the Performing Animal Welfare Society's sanctuary which is home to numerous rescued elephants. The AZA now also urges *all* its member zoos to switch to a safer and more humane elephant training system that does not utilize the bullhook.

"In addition to the inhumane treatment of elephants, traveling shows and other performances that use elephants in the state also pose a threat to public safety by bringing people into dangerously close proximity to an incredibly powerful and stressed wild animal. The use of bullhooks promotes aggression and the device will not prevent an elephant from rampaging or protect the public when such an incident occurs. There have been numerous incidents where elephants have run amok, sometimes causing death, injury, or property damage."

8) **Argument in Opposition**: According to *The Elephant Managers Association*, "With respect to the proposed bill SB 716, we would like the Committee members to be aware of some facts regarding captive elephant management:

"There are current, and widely accepted, professional industry standards such as the EMA Guidelines for Elephant Care and Management and the EMA supported Elephant Husbandry Manual, as well as the Association of Zoos and Aquariums' (AZA) Elephant Standards and Guidelines. Additionally the American Veterinary Medical Association

(AVMA) has gone on record supporting the use of professional tools, including the guide, to manage elephants;

"There are existing federal regulations that strictly govern elephant care under the Animal Welfare Act and that are overseen and revised frequently by the U.S. Department of Agriculture, animal and Plant Health Inspection Service (USDA/APHIS). USDA/APHIS utilizes trained veterinary professionals who are instructed specifically in animal/elephant care and welfare to conduct regular inspections of all license exhibitors of elephants (and other animals);

"All animal species are able to be trained using "operant conditioning." This is a type of learning in which the probability of a behavior recurring is increased or decreased by the consequences that follow. This teaching process includes both positive and negative reinforcement. Operant conditioning is used in all forms of elephant care, and the process of training animals responsibly utilizes a variety of science-based techniques which are critical to providing proper welfare and husbandry. Utilizing and elephant guide and employing positive reinforcement are often part of the same overall operant conditioning system.

"All animal species are vastly different in their husbandry needs and each species requires specialized equipment to ensure proper care. Tools such as elephant guide (or bullhooks) are safe and productive components of elephant care and training. As will all specialized equipment, their effective sue requires skill and training while their complete elimination inhibits effective and proper management techniques that are specific to elephants due to their size and unique evolutionary adaptations. Elephant tools are not intended to injure or harm the animal and are proven and humane husbandry tools that are widely utilized by knowledgeable and experience elephant care professionals in a variety of settings. They also add an increased degree of safety for the trainer, the animal, and the public."

9) **Prior Legislation**:

a) AB 777 (Levine), of the 2007-2008 Legislative Session, would have prohibited specified conduct in relation to housing, possessing, contacting, or traveling with an elephant. AB 777 was held in the Assembly Public Safety Committee

b) AB 3027 (Levine), of the 2005-2006 Legislative Session, would have prevented the use an Ankus, bullhook, or similar device on an elephant. Would have prevented the use of any chain that is used to restrain an elephant, except if utilized for the shortest amount of time necessary to provide actual medical treatment. AB 3027 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Active Environments, Inc.
Amboseli Trust for Elephants
American Society for the Prevention of Cruelty to Animals

Animal Legal Defense Fund (San Francisco Bay Area)
Best Friends Animal Society
City of Oakland
Detroit Zoo
Earth Island Institute
Elephant Voices
Elephant Sanctuary in Tennessee
The Fund for Animals Wildlife Center
The Global March for Elephants and Rhinos
Global Sanctuary for Elephants
The Humane Society of the United States
Humane Society Veterinary Medical Association
In Defense of Animals
Last Chance for Animals
The League of Humane Voters
Councilmember Paul Koretz, City of Los Angeles
Lions, Tigers & Bears
LIUNA Locals 777 & 792
March for Elephants and Rhinos San Francisco
The Marin Humane Society
Oakland Zoo
Performing Animal Welfare Society
Sacramento SPCA
San Diego Humane Society
San Francisco SPCA
Santa Clara County Activists for Animals
Sierra Club California
Sierra Wildlife Coalition
SPCA-Los Angeles
State Humane Association of California
Katy Tang, Supervisor, District 4, City and County of San Francisco
Uganda Carnivore Program

6 Private individuals

Opposition

Asian Elephant Support
Circus Fans Association of America
Have Trunk Will Travel, Inc.
The Elephant Managers Association
International Elephant Foundation
Feld Entertainment, Inc.
Jack Hanna, Director Emeritus, Columbus Zoo
Monterey Zoological
Southwick's Zoo
Western Fairs Association (Need letter)
Zoological Association of America

25 Private individuals

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